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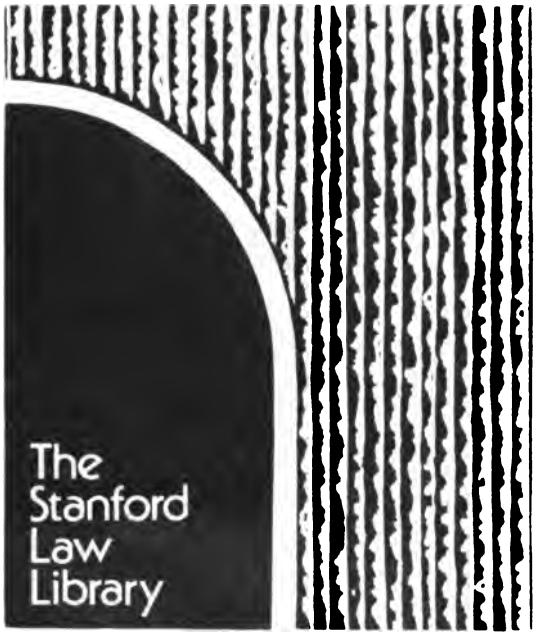

In Memory of

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Gift of

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LIVES

OF

EMINENT LAWYERS AND STATESMEN

OF THE STATE OF NEW YORK,

WITH

NOTES OF CASES TRIED BY THEM,

SPEECHES, ANECDOTES,

AND

INCIDENTS IN THEIR LIVES.

BY

L. B. PROCTOR,

AUTHOR OF "LIVES OF THE NEW YORK CHANCELLORS," "LAWYER AND CLIENT," ETC.

VOLUME I.

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TO

THE JUNIOR BAR

OF THE

STATE OF NEW-YORK,

I Dedicate this Work.

WHILE one purpose of my toil in writing it was, to gather and record the fast scattering reminiscences of the men who have attained distinction at the Bar and on the Bench of our State, ere they should, as soon they would, be forever lost;—a labor undertaken in part for their own sakes, and from sacred regard to their memories;—it has also been an object, and by no means a minor one, to present their example to those already entered, or hereafter to enter, upon that profession which we love, and to accomplish eminence in which, calls for high qualities, physical, intellectual and moral.

It has been my hope that I might thus, in my day and generation, render a service to my own profession; hold aloft the standard; depict the struggles and vicissitudes through which our great advocates have been compelled to force their way; illustrate their studies, habits and powers; show the value of steady perseverance; encourage the timid, though oft beaten back, never to despair; and stimulate the industry, honor, and laudable ambition of those who take upon themselves the emblems of our order.

To you, therefore, young lawyers of New York, have I consecrated the time and labors necessary to collect and twine together the materials of this book; and trust the offering may bear fruit, many-fold, in your own achievements and renown.

THE AUTHOR.

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THE

BENCH AND BAR

OF NEW YORK.

OGDEN HOFFMAN.

Styled the American Erskine.—A Son of Josiah Ogden Hoffman.—Enters the Navy as a Midshipman.—Enters the Service of the United States on board the President.—Captured with that Vessel in Attempting to Run the Blockade.—Thrilling Scene.—A Prisoner of War at Bermuda.—Dines with the British Officers.—Lieu—tenant Price Promptly Resents an Insult.—The Challenge.—Transferred to the Guerriere, Decatur's Flag Ship.—Accompanies Expedition to the Barbary States.—Conflict between the Guerriere and an Algerine Ship of War.—Commodore Decatur.—Hoffman Boards the Pirate Ship.—A Boarding Conflict.—The Victory.—Returns to New York.—Resigns his Commission.—The Law Student.—John Duer.—Hoffman Completes his Studies with him at Goshen, Orange County.—Commences Practice at Goshen.—Partner of Mr. Duer.—His Success as a Lawyer.—Incidents in his Practice.—Appointed District-Attorney.—Elected to the Assembly.—Removes to New York.—Hugh Maxwell.—Enters into Partnership with him.—Trial of Henry Eckford and Others.—Hoffman's Distinguished Position at the Bar of New York.—Appointed District-Attorney of New York.—His Political Career.—Moses H. Grinnell.—Dudley Selden.—Trial of Richard P. Robinson.—Description of the Murder.—Hoffman's Surpassing Eloquence.—Thrilling Scene.—The Verdict.—Its Effect.—Hoffman as a Criminal Lawyer.—His Advice to Mr. Evarts.—Elected to Congress.—His Congressional Career.—Grand Reception in New York.—His Speech.—Appointed United States District-Attorney.—Elected Attorney-General.—Description of his Oratory.—Personal Appearance.—His Death.—Proceedings of the New York City Bar.—Democratic General Committee.

OGDEN HOFFMAN has repeatedly been styled the American Erskine, and the appellation is not without propriety—in some circumstances the parallel is complete. Both of these great lawyers in their youth entered the navy; both attained the rank of passed midshipman, resigned that position, and entered the

legal profession, in which, by an intuitive acuteness, great erudition and matchless eloquence, they won the highest honors.

While Erskine overthrew constructive treason in England, and established there the doctrine that the jury are judges of the law and fact in cases of libel, Ogden Hoffman, by his fearless and disinterested defense of those whom clamor and prejudice had condemned, established at the American bar that high-toned independence which places courts of justice beyond the reach of any influence. Mistakes as to facts and the operation of those passions which are inseparable from human frailty, may have led him to erroneous conclusions as to the real merits of cases which he espoused. Many of his speeches at the bar were distinguished for their bold and happy novelties of expression and felicities of phrase, accompanied by the most perfect simplicity of manner. The exuberance of his imagination constituted at once the charm and the defect of his oratory.

Ogden Hoffman was born in the city of New York, on the third day of May, 1793. His father was Josiah Ogden Hoffman, a distinguished civilian of that city, the associate, and often the opponent of Hamilton, Kent, Ambrose Spencer, Emmet, Wells, and other eminent jurists, whose profound learning and high order of eloquence, raised them to the sphere of the Pitts, the Burkes, the Sheridans and the Currans.

Ogden was the half-brother of Charles Fenno Hoffman, the eminent poet and novelist. On attaining his eighth year, he was placed in one of the best schools in the city. Here his progress was at first slow and tardy; but he soon began to gain rapidly in his studies.

It was said of Sir William Jones in his youth that he was a boy of so active a mind, that if he were left naked and friendless on Salisbury Plain, he would find his way to fame. This remark might well have applied to young Hoffman. He soon became

one of the best classical scholars in the institution, and also a superior mathematician—especially in the department of logarithms. His mind, naturally adventurous, early began to exhibit a preference for the life of a sailor; he read with pleasure the bold and brilliant exploits of naval heroes, and he determined to enter the naval service of his country.

His father intended to prepare him for the bar; but yielding to the strong desire of the boy for the navy, he procured him a midshipman's berth. With great diligence and unwearied application, he perfected himself in nautical science and naval discipline. When war with England was declared, he was in his seventeenth year. At this period, he entered the service of the United States, as a midshipman, on board the frigate President. He was with that vessel when she was captured by the British while attempting to run the blockade of New London. Through all the dangerous and exciting scenes which resulted in her capture, young Hoffman conducted himself with the coolness and intrepidity of a veteran. The President was taken to the Bermudas in charge of the British ship-of-war Endymion, where the American officers were detained as prisoners.

While at Bermuda, several British officers were one day invited to dine with the officers of the President. At the table there was an English lieutenant whose national pride had been inflated by the capture of the President, and whose insolence to the American officers had exhibited itself on several occasions. When toasts became the order at the table, after several courteous sentiments had been given by both British and American officers to each other, this lieutenant arose and proposed the following:

"The captain of the Endymion: by conquest, the captain of the President."

Hardly had these words escaped his lips, when Lieutenant Edward Price, of the President, threw a glass of wine full in the face of the British officer,

exclaiming, "Resent that before you talk about the commander of the President." A challenge ensued, young Hoffman acting as the second of Price; but the hostile meeting was prevented by the authorities.

At the close of the war, Ogden was transferred from the President to the ship-of-war Guerriere, 44 guns. In 1815, she was Commodore Decatur's flag ship, attached to the American squadron destined to subjugate the Barbary States, whose persistent piracies and outrages upon our shipping brought upon them the vengeance of the Republic.

Ogden Hoffman accompanied this expedition, and the gallant Decatur soon conceived a strong and an almost parental affection for the young midshipman.

On the 16th of June, 1815, the Guerriere, being detached from the squadron off Cape Degatt, in Spain, fell in with the Algerine frigate Mazouda, 64 guns and 100 men, commanded by the notorious pirate, Rias Hammida, who had long been the terror of the Mediterranean. A terrible conflict took place, which resulted in the destruction of the Mazouda.

During a part of the engagement, Hoffman was placed in command of gun No. 6, next to a long 24-pounder. While engaged in serving his gun, the 24-pounder burst, spreading death and destruction on every side, and prostrating him senseless upon the deck. Fortunately, he was only stunned; and was on his feet in a moment. Before he could collect his scattered senses, a box of cartridges exploded, hurling him across the deck. Once more he escaped the death which others by his side suddenly met.

At this moment he was summoned to the side of Decatur. Begrimed and blackened with powder, his clothing torn, his cap blown away, he approached his commander, with the customary salute.

"Who are you, sir?" demanded Decatur.

"I am Hoffman, sir," was the reply.

"Hoffman! Very well, sir; you look as though

you had been shot from a gun. Take your position there," said the commander, pointing to the place he was to occupy during the remainder of the battle.

In a few moments more, almost every spar belonging to the pirate vessel was swept away by the shot of the Americans; but the Guerriere was now so badly crippled by the enemy, and the explosions which had taken place on her decks, that she was compelled to haul off for repairs. As the flag of the pirate was still defiantly flying, the boats of our vessel were made ready, with orders to board the enemy, and compel her to surrender. Hoffman, who was in command of the boats, promptly obeyed the order, and was soon on the decks of the Mazouda, followed by the crews of the other boats. A ghastly sight presented itself to their view. The body of Hammida, her commander, cut asunder by a solid shot, lay before them. On every side were the dead and dying; but enough of the enemy remained to make a fearful resistance, and one of those hand to hand conflicts which follow the signal to board, now took place; but the pirates were soon compelled to surrender; those who escaped death were transferred to the conqueror's ship, and the Mazouda was blown up.

The gallant conduct of Hoffman won the approbation of his commodore, who presented him with the cutlass and pistols of the Algerine commander.

He continued in the navy until the trouble with the Barbary States was settled, and peace declared; when, wearied with the monotony of the service, he resigned and returned to New York, and commenced the study of law in the office of his father.

The elder Hoffman was well aware that many legal principles are so artificial and refined, and that others are qualified by such distinctions and subtleties, that they cannot be readily understood by the student without much explanation; he therefore carefully superintended the education of his son, and en-

couraged him to study with attention the arguments and opinions of the great judges and jurists of the past.

He believed that no man can be thoroughly acquainted with any one branch of knowledge, without having some skill in others also, that to no department is general knowledge so necessary as in the science of jurisprudence, "which pushes its roots into all the grounds of science, and spreads its branches into every object that concerns mankind." "He who expects to be eminent at the bar," said he, "depending simply on a knowledge of law, is like a general with an army consisting entirely of infantry, without artillery or cavalry," and he therefore taught his son to read history, metaphysics, criticism, and ethical science, and also impressed upon his mind the fact that "language is the armory of the human mind, and at once contains the trophies of the past, and the weapons of its future conquests," and the young student applied himself with energy and perseverance to the study of his own language, reading with critical inspection the elegant and refined diction of the English classics. In this way he gained that wonderful command of language which rendered him so enchanting as a speaker.

Soon after he commenced his legal studies, a debating society was organized in New York, called "The Forum." Among its members were Ogden Hoffman, James W. Gerard, Hugh Maxwell, Hiram Ketchum, and Henry Wheaton; all of whom subsequently became eminent at the bar of the State. All of these distinguished persons have passed from the scenes of earth, except Mr. Gerard and Mr. Maxwell. The former, a few years ago, retired from a long and brilliant practice, to the regret of his professional brethren and the public. As was said of him by one of his eminent compeers, "he never forgot, in the sharpest controversies at the bar, that courtesy, that kindness and conciliatory temper which distinguished him in his long career." Mr.

Maxwell has also retired from practice, carrying to his retirement the respect and regard which his well-earned reputation demands.

The meetings of "The Forum" were held in the old City Hotel, on Broadway, near Cedar-street. "At first, six cents was charged for admission, but the growing popularity of the young and brilliant debaters filled the large room, and, as the receipts were devoted to charitable purposes, the price of admission was raised to twenty-five cents. Often, when some specially exciting subject was to be discussed, the old Park Theater, crowded on other nights, would, on these occasions, present a beggarly array of empty seats." In this arena, the eloquence of Ogden Hoffman developed itself, in speeches which were scarcely less dazzling than those delivered by him in the days of his highest triumphs at the bar. There, too, Mr. Ketchum displayed that argumentative and classic mind which in after years rendered him an ornament to the New York city bar; and there Maxwell, Gerard and Wheaton, exhibited those unrivaled mental energies, and that pleasing diction which ever charmed their auditors.

While Mr. Hoffman was thus preparing for his future eminence, John Duer, an eminent lawyer residing at Goshen, in the county of Orange, and an intimate friend of the elder Hoffman, happened to be in New York; here he became acquainted with Ogden. Being much in need of an experienced student, he invited the young man to continue his studies with him. Such were the inducements which Mr. Duer held out, that the invitation was accepted and young Hoffman became a resident of Goshen.

His close application to his studies, his quick, intelligent mind, his ingenuous and pleasing disposition greatly commended him to his preceptor, who, scholastic and studious himself, admired those qualities in others. It was, therefore, a pleasure to him to aid Hoffman in the prosecution of his studies. He

took every occasion to draw out his views upon questions of law, in conversation, and upon questions submitted by clients. In this way Ogden was practically conducted through elementary principles, precedents, and the philosophy of the law; thus he became a profound and thoroughly read lawyer.

His preparatory course being finished, he was called to the bar, and immediately became a partner of Mr. Duer, entering at once into the detail of an extensive practice.

In May, 1823, he was appointed District-Attorney of Orange County. The bar of that county consisted of the ablest lawyers in the State. This appointment, therefore, was highly complimentary to him as a lawyer. In the discharge of his official duties he was brought in collision with the most eminent advocates of the day. The office of district-attorney places a lawyer in a position where his hand is against every one, and every hand is against him—constituting him a sort of legal Ishmaelite.

During his term of office a large number of important criminal trials occurred, in some of which he was opposed by General Root and Elisha Williams. It was in conducting these trials that he acquired those unrivaled powers, that accurate and extensive learning, which afterwards rendered him one of the illustrious lawyers of the State.

On one of these occasions he followed General Root, who on the defense made one of those singularly powerful appeals to the jury for which, at that day, he was so distinguished. So exhaustive was his argument that it seemed he had left no room for Mr. Hoffman to found an argument or to establish the theory of the prosecution; and the curiosity of the bar was greatly excited in conjecturing the course he would pursue. The young advocate commenced; but a short time elapsed before he gained the earnest attention of the jury by the novelty of his combina-

tions, by the force of contrasts, by the striking manner in which apparently conflicting circumstances were harmoniously connected and blended in one strong chain of circumstantial evidence. He then seized the points and position of Root, and with the hand of a master dissected them with analytic skill. Then commenting upon the authorities cited by his great opponent, he entered, with fearless tread, regions of the most profound legal learning, displaying such mastery of the common law, such accuracy of reasoning, that when he closed, Mr. Root himself congratulated him upon his effort.

Hoffman had none of those mechanical arts of oratory which often conceal mediocrity of intellect.

In politics, he was a Democrat; and in the presidential contest which caused so much excitement throughout the country in 1823, he supported General Jackson; but such was his devotion to his profession that politics were a secondary matter with him. He was never what is called a politician. As a legislator in the State Assembly, as a law-maker in a Constitutional Convention, and as a representative in Congress, his eloquence and his various parliamentary abilities raised him to the sphere of a statesman.

From his earliest years he was surrounded by the most prominent lawyers and legislators. His father was, as has been already remarked, one of the leading lawyers and legislators of his time. He was to the American bar what Edmund Burke was to the English, and Moncreiff to the Scottish bar.

In the great case of the People *v.* Goodwin, tried in New York in 1821, his address to the jury equaled in power and judicial ability that of Mr. Curran's defense of Rowan in the Court of King's Bench.

He first entered the State legislature in 1791, and was continued in that body, with the exception of one or two years, until 1812—during a portion of which time his colleagues were the illustrious Kent, Brok-

holst, Livingston, De Witt Clinton, Aaron Burr, and others equally celebrated. In the legislature of 1794, with Ambrose Spencer, he was the leader of the Federal party. During that session he made his celebrated speech against the council of appointment, concluding by moving that the members composing that body be immediately arrested.

He was one of the earliest and most brilliant attorney-generals of the State,—succeeding, in 1795, the celebrated Nathaniel Lawrence. Identified with the early struggles and triumphs of the Federal party, and with the early history of the New York bar, it is not strange that his name stands out conspicuously in the history of the State.

Perhaps the early political contest of his father gave Ogden a certain dislike for the political arena which he never fully overcame; for, whatever success awaited him there, he always retired from it with pleasure to the more congenial pursuit of his professional duties.

In the autumn of 1825 the Democrats of Orange County unanimously nominated him for member of Assembly; and he was elected by a very large majority. His reputation as a lawyer gave him a high position in the legislature. In the debates which occurred in that body he frequently took part. His eloquence was of that peculiar nature which rendered his speeches always acceptable. Samuel Young was Speaker of the Assembly; unfortunately, between him and General Root, then a member from Delaware, a bitter feud existed.

As the legislature was about to adjourn, the usual vote of thanks was unanimously tendered to Colonel Young "for the able and impartial manner in which he had performed the duties of the chair, during the session." As soon as this vote was announced, General Root objected to its entry in the minutes of the clerk. A singular and exciting scene occurred. Mr. Hoffman, although a friend to General Root, insisted

that as the resolution had unanimously passed, it ought to be so entered in the journal.

The pointed and laconic speech of Mr. Young to the legislature on this occasion, will be found in another part of this work.

For some time Mr. Hoffman had contemplated removing to the City of New York. At the close of his legislative term, he was offered a partnership by the late Hugh Maxwell, an eminent lawyer of the New York bar, and at that time District-Attorney of the City and County of New York. He was first appointed to that office in 1817, and again in 1821, after the adoption of the new constitution. He continued in office until 1829, when he was succeeded by Mr. Hoffman. He possessed the most rare and peculiar qualifications for a prosecuting officer. Deeply and thoroughly learned in the English and American criminal law, with rare elocutionary powers, a pleasing, genial manner, he was formidable before a jury. But his natural hatred of crime gave him that determination in the trial of criminals which sometimes rendered him obnoxious to the charge of being vindictive in his efforts to convict persons indicted.

The offer of Mr. Maxwell was accepted, and Ogden Hoffman became his law partner and a resident of the City of New York. About this time, Henry Eckford, Jacob Barker, General Swift, Lawton, Mowatt, and others, were indicted by the grand jury of New York, for a conspiracy to defraud the public.

The high social and political position of some of the defendants, the peculiar nature of the crime with which they were charged, the strange, determined, and ingenious defense which they made, gave to the trial unusual significance and interest.

Mr. Hoffman assisted Mr. Maxwell, and he was thus at once placed conspicuously before the public; perhaps on no occasion did he ever appear to better advantage than in conducting this trial. He grappled all the difficulties of the question with facility and boldness;

"he pushed every argument to the uttermost;" and in short, so fully developed the qualities of a great lawyer, that he at once took a commanding position in this new field of action.

As we have seen, Mr. Hoffman commenced life a Democrat, an ardent supporter and admirer of General Jackson. But he believed the United States Bank to be a moneyed corporation created for national purposes, which had proved superior to, and regardless of, legislative restraint, and which controlled, aided and advanced the whole resources and industry of the country; therefore, the removal of the deposits was a hazardous experiment, dangerous to the country and ruinous to its prosperity. When the President actually proposed such a removal, Mr. Hoffman, Moses H. Grinnell, Dudley Selden, and a large number of other prominent citizens, abandoned the Democratic party.

These distinguished personages, in a large and enthusiastic meeting, publicly declared the reasons which guided them in this step. Mr. Hoffman, in an able and statesman-like speech, sustained his compeers in thus deserting their party.

"Men will see," said he, "that henceforth the relation between the government and the Bank must be hostile, and between the banks selected for holding the deposits mistrust, doubt and uncertainty will take the place of confidence. Without a National Bank, the stability and safety of the whole monetary system will be endangered."

From that time, during the existence of the Whig party he continued to act with it—devoting, however, but little of his time to politics; the duties and labors of his profession engrossing his time and talents. He gave his attention mostly to criminal business, and for twenty-five years there was not an important criminal trial in the City of New York in which he was not employed as counsel.

Among these was that of the People *v.* Richard P.

Robinson, tried in the City of New York in 1836 for the murder of Helen Jewett. The inflexible determination with which he defended this desperate case, added much to his reputation.

On the morning of April 10, 1836, the body of Helen Jewett was discovered, terribly mangled, in her room, at the residence of Mrs. Townsend, in the City of New York. Between eight and nine o'clock in the evening previous, Robinson came to Mrs. Townsend's and requested to see Miss Jewett. He wore one of the cloaks which at that time were fashionable; and while asking for Miss Jewett he leaned against a post in the hall, so that the person of whom he inquired had a view of his face. Helen was at this time in the back parlor; but hearing the inquiry, came into the hall. The man was then ascending the stairs which led to her room. She followed him up the stairs, and when near him she exclaimed, "My dear Frank, how glad I am that you have come!" They then went up stairs and were not seen again until eleven o'clock, when Miss Jewett came to Mrs. Townsend and asked for a bottle of champagne. After a few minutes that lady took the wine to Miss Jewett's room, where she again saw Robinson, who was holding a candle and reading a book. From that time until the discovery of the murder, no person saw Helen Jewett. The house was closed a little after twelve o'clock. In the course of the night, some one asked Mrs. Townsend to be let out; she made no reply, and the demand was not repeated.

Quite early in the morning she went to Helen's room, and on opening it, a quantity of smoke gushed out. She gave the alarm, and a watchman came in, extinguished the fire, and discovered Miss Jewett's body shockingly mangled with some sharp instrument. In searching the back yard of the house, a hatchet, covered with blood, was discovered; and in a yard adjoining, Robinson's cloak was found. A piece of twine was attached to the hatchet, and an-

other piece, corresponding with that on the hatchet, was found tied to the cloak. The hatchet had undoubtedly been tied to the inside of the cloak by the twine, and thus concealed. It was evident that the man who left the cloak and hatchet escaped by climbing the fence between the two yards. This fence was covered with a heavy coat of whitewash. Robinson was found at his lodgings soon after this discovery; his pantaloons were marked with lime, indicating his contact with the fence in the rear of Mrs. Townsend's residence. He was a young man, about twenty-two years of age, a clerk in a wholesale dry-goods house. His relations with Miss Jewett had been of the most intimate nature, and there appeared no motive whatever for the commission of the terrible crime. He was promptly arrested, committed to jail, indicted, and brought to trial. Ogden Hoffman and William M. Price, afterwards United States District-Attorney, were retained by the friends of Robinson to defend him.

Of all the criminal trials which up to that period had occurred in the City of New York, none created the interest which this did. A week or more was consumed before it was given to the jury.

Mr. Hoffman, "in one of those brilliant, eloquent, and fervid effusions, which in the career of his large and extensive practice, gave him imperishable celebrity, and never-dying fame, opened the case for the defense." He spoke with keen and cutting satire upon the character of the witnesses. He dwelt with great ingenuity upon the question of the identity of the person calling for Miss Jewett on the evening before the murder—upon the significance of the fact, that she accosted the man who called for her in the evening, by the name of Frank, and not Richard; contending that mistakes upon this subject so frequently occur in the common affairs of life, even with respect to persons with whom we have had immediate communication, that before a man should be sent to the

gallows, there should remain no doubt whatever that he was really the person who committed the crime; especially where there is an entire absence of all motive. On the question of motive, he made a strong and forcible argument. "Where the evidence is merely circumstantial," said he, "the absence of any motive for the commission of the crime, is a strong point in favor of the accused." Finally, the veracity of the witnesses for the people, their tenacity of memory, acuteness and accuracy of hearing and observation, were commented upon with the most sagacious skill by the eloquent advocate. But his own hypothesis of the prisoner's innocence was as bold and ingenious as it was ably maintained.

Mr. Price followed Hoffman in an address to the jury of great power and weight.

The prosecution was conducted by Thomas M. Phœnix, Esq., District-Attorney, assisted by the ablest lawyers in the city, who made every effort in their power to convict Robinson; but the impression which the thrilling eloquence of Ogden Hoffman made upon the jury could not be overcome. After an absence of three hours and a quarter, they returned with their verdict. They filed into court with that peculiar tread, which nothing but a returning jury has; amid the most breathless silence of the vast audience assembled, they took their seats; it was a terrible moment for Robinson and his friends,—a moment in which life or death was to hang upon a single word, and that word was about to be uttered. Those who watched Ogden Hoffman at that moment, as he sat within the bar, apparently calm and emotionless, could discover in the deep lines of his speaking face, the intense anxiety—the contending emotions of hope and fear—which pervaded his breast. At length the clerk arose, and in a voice which rang clearly through the court room, asked the momentous question:

"Gentlemen of the jury, have you agreed upon your verdict?"

The foreman arose and solemnly answered, "We have."

Again the voice of the clerk rolled over the audience: "Prisoner, look upon the jury; jurors, look upon the prisoner at the bar. Do you find the prisoner guilty, or not guilty?"

There was a moment of silence,—a moment of almost heart-bursting suspense. All bent forward to catch the answer, as it came from the lips of the foreman—"We find the prisoner at the bar, not guilty."

Those who have witnessed that portentous stillness which awaits the coming of the storm—one moment a silence so deep that the pulse of nature seems to have ceased, the next the wild sweep of the hurricane—will have some idea of the scene that followed the announcement of this verdict. The pent up emotions of friend and foe gave way, and for a moment a passionate outburst swept through the court room; but Richard P. Robinson was free. The moment the verdict was pronounced he fell insensible into the arms of his friend, Mr. Hoxie.

This unequaled and singularly successful defense loses nothing of its brilliancy when compared with Erskine's defense of Hadfield, or Curran's effort in behalf of Orr. It gave Mr. Hoffman a high rank among the great popular orators of his day and profession.

As a distinguished lawyer said of him: "In criminal cases, he was infinitely the superior of any man at the bar. *Primus inter pares*—he stood without a compeer. Here his perfect knowledge of criminal law—his deep insight into the springs of human action—his solid sense, combined with his surpassing eloquence, gave him a position for which none had the temerity to contend."

His defense of Walker, charged with the murder of his wife, was another of those successful and powerful defenses in which he succeeded against circumstances which pointed with fearful certainty against

his client, but which were answered by an ingenious hypothesis, sustained by an eloquence which caused the heart to bow to its supremacy, replete with cutting sarcasm and logical acuteness.

In the character of a prosecutor, he was as powerful as in the defense. This was exhibited in his prosecution of Colonel Schlessinger, a "discomfited filibuster in Nicaragua," and John L. O'Sullivan, Douglass Benson, and other cases of great importance.

But it must not be supposed that Mr. Hoffman had no abilities as a civil lawyer. On the contrary, some of the most difficult cases, involving the most intricate legal questions ever tried at the New York bar, were conducted by him, as were many of the reported cases adjudicated in the Supreme Court, Court of Errors, and Court of Appeals.

His ideas of the criminal practice will be better understood by a reference to a conversation which he once had with Mr. Evarts, as related by that gentleman himself, who at an early period of his practice had been engaged in a criminal trial against Mr. Hoffman, in which he was defeated.

"I was," said Mr. Evarts, "a stranger to Mr. Hoffman until then; but I have never forgotten, neither the singular kindness of the man, nor the singular wisdom of his counsel."

"Mr. Evarts," said he, "though you conducted this case in a manner highly creditable to you, and though it may not be agreeable to you to know that your efforts have been defeated, let me say to you, that it is the most fortunate circumstance in the result of the trial to you. I was, some years ago, the counsel for a criminal accused of a great crime. The result of my effort secured his acquittal. I gained in professional repute, but I have ever been sensible, though my own conscience suggests nothing to reproach myself with, that the sober sense of the community has taken some umbrage at that result. Now, in the result of this trial, you are safe from this influence.

Take my advice: adhere to civil business, and let the criminal courts alone."

"He was," continued Mr. Evarts, "a very able lawyer; and I mean it in the sense that every lawyer is able, if he be able at all; he was able to the time, the occasion, and the effect. He had embodied, digested, and assimilated to himself the great principles of the law and reasoning that make up the character of the lawyer."

Mr. Hoffman once said, in speaking of Thomas Addis Emmet, "Listening to him, you were struck with his power; he seemed like a piece of immense machinery, moving with the greatest regularity and smoothness, and yet as if restraining its gigantic power."

Like William Wirt, Mr. Hoffman was entirely the lawyer. The consciousness that his proud position at the New York bar gave him more real fame than could be won in the political arena, kept him from politics; and yet he was strongly attached to his party, and possessed partizan zeal. Often, in the great political gatherings which took place in the city, he was called upon to address his fellow-citizens on political subjects. At such times he was always enthusiastically received, and his country, its institutions, its policy, its interests, its destiny, were the topics on which he descanted. His loyalty to truth caused him to avoid all arts of the demagogue; and he spoke the honest conviction of his own mind "straight out," with an intensity of thought, with an elaborate finish, and a cogency of reason, which marked the productions of the great English statesmen.

In the winter of 1828, he was a member of Assembly from the City of New York. His labors as a member of the Judiciary Committee are remembered by several elaborate reports recommending amendments to the practice and procedure of the State courts—bringing complicated actions to the plainest constructions of law and reason. His touching and beautiful

speech, delivered on the announcement of the death of Governor Clinton, is not excelled in the English language. With the exception of this legislative term, Mr. Hoffman remained several years free from the storms and the anxieties of political life.

At length he was compelled to enter public life for a time. In September, 1836, amid the political contest which resulted in the election of Mr. Van Buren to the presidency of the United States, Mr. Hoffman was nominated by the Whigs of the third Congressional district for member of Congress, and was elected by a large majority.

In the mean time, the pecuniary pressure which followed the issuing of the specie circular, and which was already general and severe, was rapidly approaching its crisis. In May, 1837, the event for some time anticipated by many — a general bank explosion —took place, the banks in the City of New York by common consent suspended specie payment, and a panic followed in the commercial world, unparalleled in its results and duration, and which convulsed the nation, throwing a cloud over the administration of Mr. Van Buren.

Soon after the suspension in New York, the President issued a proclamation for an extra session of Congress, to be convened on the 15th of September following. With the opening of this session Mr. Hoffman entered Congress. In the debates which took place in the House during this exciting session, he took a conspicuous part, though he did not often occupy the floor; yet when he did he always commanded respect and attention. His position on the Committee of Foreign Relations subjected him to great labor. The industry and ability with which he discharged the duties thus committed to him gave him much prominence.

On the 16th of October the extra session adjourned, and Mr. Hoffman returned to his constituency. An immense meeting was waiting to receive him on his arrival in the city, and his reception amounted to an

ovation, such was his popularity. His speech on that occasion was warmly commended.

"I come to you, my masters," said he, "as your servant, commissioned in an hour of peril with high and responsible duties, to give you an account of my stewardship. I am conscious that it is for you to weigh your public servants in the balance, and, if found wanting, to displace them. No public officer is absolved from his responsibility to the people. Political power is not a prize which justifies arts and compliances that would be scorned in private life. Political power is a weak engine compared with individual intelligence. The great hope of society is individual character."

He then entered upon a consideration of the distresses of the country:

"In all periods of our history," said he, "the state of the country has afforded a topic of controversy. One class of politicians, in their zeal to find fault, have been disposed to exaggerate every partial misfortune or local distress; while others were equally ready to magnify all our advantages—to gloss over failure and mishaps, to set down our increasing prosperity to the credit of political sagacity and skill. As it is frequently more profitable to praise than to blame men in power, the latter class of politicians have been the most numerous and confident; and not content with refuting the arguments of their opponents, they have, in most cases, treated their complaints as mere factious clamor, proceeding from the sinister motive of private interest or ambition.

"The present times, however, present the singular spectacle of unanimity on the actual condition of the country. Here is, unhappily, no longer any room for controversy on this formerly doubtful point, and the tardy conviction of the most incredulous now yields to the irresistible evidence of facts too notorious to be denied. One universal cry of distress is heard throughout the land. Nor is it particular branches

of industry that have decayed; but every sphere of industry is at a stand—and this, too, in a community such as ours, with every advantage of agriculture and science, with artizans well trained in every mode of refined and ingenious industry. The laborer has now to struggle against the double calamity of low wages and want of employment. The same causes which have entailed such general distress on the laboring classes, have assailed their employers. Why is it then, that with such unexampled advantages to secure national and individual prosperity, we are reduced to a state of actual wretchedness? What principles of mischief have been operating to counteract the strong basis of society to improvement, and to undermine the solid foundations of prosperity?

"On this question, various and contradictory opinions have been formed; we all agree that distress is upon us, but differ as to its cause. I propose now to give my reason for the cause of the great evils under which we are suffering."

He then reviewed the causes of our financial difficulties, and his speech on it was considered at the time as one of the ablest and most statemanlike dissertations upon the great questions then before the public, which had in any form appeared before the people, and it was read with interest by persons of all parties.

The regular session of Congress opened on the fourth of December, 1837. The great questions before that body were the establishment of an independent treasury; the bill to repeal the Specie Circular of July, 1836; the annexation of Texas; the petitions for the abolition of slavery in the District of Columbia. These questions, some of them of the most exciting nature, were discussed with an ability which gave Congress a paramount position over the parliamentary bodies of the civilized world. In these debates Mr. Hoffman frequently participated. His labors on the floor, and

on the important committees to which he belonged, rendered his labors arduous and difficult.

On the third of March, 1839, the twenty-fifth Congress adjourned.

Mr. Hoffman was not desirous of a re-nomination; but the Whigs of his district strongly insisted upon returning him; and in the fall of 1839 he consented to accept a second nomination for Congress. He was again elected; from December, 1839, until March 3, 1841, the laborious duties which devolved upon him by the twenty-sixth Congress, occupied the principal part of his time. Before this session closed, he was tendered a re-nomination, but he emphatically declined.

The election of 1840 resulted in the triumph of the Whig party, and the election of General Harrison.

One of the first acts of President Harrison was to appoint Mr. Hoffman United States District-Attorney. The duties of this office were congenial to his taste, and in the discharge of them, new professional honors awaited him. As has already been said, at the expiration of Mr. Maxwell's term as District-Attorney of New York City, in 1829, Mr. Hoffman succeeded him. The experience of six years in the discharge of this office gave him peculiar qualifications for the office which General Harrison bestowed upon him.

He continued to discharge the duties of this office for a little over a year after the accession of Mr. Tyler to the presidential chair, when he resigned. Though "one of the great lights of the Whig party," after retiring from Congress in 1841, he mingled but little in active politics.

In the fall of 1854 he was elected Attorney-General of the State, and served the usual term of two years. This was the last official position which Mr. Hoffman held. From the time of his leaving Congress, almost up to the very hour when death fell upon him, he was engaged in his professional duties.

As has been well said of him by another: "The

great triumphs of Ogden Hoffman were at the bar, and it is no disparagement to others to say, that there he was unequaled. His legal erudition was laid deep in the foundations of great elemental truths. It may be said of him—to borrow the idea of one who combined the philosophy of law with sagacious statesmanship—that as lawyer his mind was not confined within the narrow sphere of the every-day practice of our courts; but it arose to the lofty hights of the great principles of national and public morality."

As one of the leading journals of the City of New York remarked at the time of his death:

"No man in our city has ever had a larger circle of personal friends. No man in the practice of the law in this State enjoyed more universally, the unqualified affection of the members of his profession. His social qualities were of the highest order. Indeed, his genial and kindly nature influenced him in his course in politics as much as in private life, and saved him from the hostility of opponents."

As an evidence of the truth of this remark, as soon as his death was announced in the city, the Democratic General Committee immediately assembled. Lorenzo B. Shepard took the chair, and John Cochrane offered the following resolution:

"*Resolved*, That the members of this committee have heard with emotions of regret of the decease of Hon. Ogden Hoffman, late Attorney-General of the State, and for many years a representative in Congress from the City of New York; that his uniform frankness and courtesy of character, his honest devotion to the constitution of the country, his services rendered as an officer in the navy of the United States with the gallant Decatur, with his large abilities and capabilities for future usefulness, all combine to impress us with the loss we have sustained in common with the citizens of this State."

This resolution, originating as it did, from political

opponents with whom Mr. Hoffman had often met in the collisions of party strife, is one of the most beautiful commentaries upon his life and character which could be offered or produced.

In person, Mr. Hoffman was slightly above the medium hight, full proportioned and erect. Two years before his death, an article descriptive of his personal appearance appeared in one of the New York papers.

"Who is that merry-faced, laughing-eyed, slouchy looking elderly gentleman, with thin whitish hair, for whom everybody in the crowd makes way about the City Hall steps, and who pause in their conversation to look at and bow to? Who is it? A pretty question to ask about one of the most beloved of men—one of the most popular, and who for this year, and one to come, will occupy the next highest position in the United States to the Cabinet Attorney-General. You only whisper the question, for not to know him will unquestionably argue yourself unknown. . . . .

"He has been in the legislature, he has been District-Attorney in two counties, he has been United States District-Attorney and member of Congress, before occupying his present office, which was never so well adorned. He has a future, too, of promise, for he has already been named for Governor and Vice-President. . . . .

"He is the best orator in the State by all odds. He speaks with great ease and fluency, in choice language, in well-rounded sentences, and with a grace of gesture and dignity of manner. He can be gay, witty and pathetic, but chiefly excels in the latter. Few who heard his defense of Richard P. Robinson, can forget his 'My poor boy.'"

It may well be said of Mr. Hoffman, that he was "not of great property, but rich in integrity." He never aspired to riches, he saw around him, on every side, too much of vulgar wealth, too many instances

of plowmen turned lords, too much tawdry display in those whom fortune relieved of poverty, while she left to them their reeking vulgarity, to desire that kind of distinction.

How many there are in the great metropolis who have bartered happiness, soul, body, manhood, everything, to become wealthy, and who count their wealth by millions, yet cannot purchase with it all, two simple lines that record the fame of Ogden Hoffman.

Mr. Hoffman continued to wear the armor of the bar—to be a contestant in that arena to which he was drawn by his youthful ambition, and where he made his name memorable and historic, until, like a gallant veteran, he fell on the field of his glory.

He died suddenly on the second day of May, 1856, in the sixty-third year of his age.

The general demonstration of public and private sorrow that followed the announcement of his death, attested the estimation in which he was held.

A large meeting of the New York City bar was immediately convened at the City Hall. All the courts in session in the city immediately adjourned, and in many parts of the city business was suspended.

A committee consisting of Ambrose L. Jordon, Joseph Blunt, J. W. Edmonds, Charles O'Conor, Francis B. Cutting and Daniel Lord, were appointed to draft resolutions expressive of the high respect which his surviving brethren of the bar entertained for his memory, and their grief at his loss.

Since that period, the chairman of that committee and several of its members have followed him to the bar of that dread Being to whom the distinctions of earth are nothing, at whose right hand are eternal pleasures and glories.

The demonstration at Mr. Hoffman's funeral has never been equaled in the city, since Hamilton went to his grave.

Mr. Hoffman left one son, who is the present Judge

Ogden Hoffman of the United States District Court for California—a son worthy of his honored father.

The character of Ogden Hoffman, whether as the lawyer, legislator, orator, or the private citizen—the husband—the father—the Christian gentleman, is certainly one to be studied—to be admired—to be imitated.

GEORGE P. BARKER.

His Character.—Parentage.—Dr. Payson.—Enters Amherst College.—Interesting Incident, nearly resulting in his Expulsion.—His Able and Successful Defense.—Is Transferred to Union College.—Gains the Friendship of Dr. Nott.—Thrown on his own Resources.—Commences the Study of Law while in College.—Alonzo C. Page.—Tries Law Suits in Schenectady.—Incident.—Graduates.—Removes to Buffalo.—Millard Fillmore.—Barker is Admitted to the Bar.—Commences Practice at Buffalo.—Becomes Singularly Engaged in an Important Criminal Trial at Albany.—Touching Incident.—Edward Livingston.—Gratifying Results of the Trial.—Appointed District-Attorney.—Elected to the Legislature.—His Political and Professional Career.—Contest for Mayor.—Election of 1840.—Appointed Attorney-General.—Action of the Buffalo Bar.—Election of 1844.—Re-appointed District-Attorney.—His Health.—Case of Pollock.—Interesting Incident.—Syracuse Convention.—His Last Political Speech.—His Death.—Proceedings of the Bar in Relation to his Death.—Conclusion.

DISTINGUISHED as George P. Barker was in his profession, yet such was his versatility, that the lineaments of his mind and character appear with as much advantage in the politician and legislator, as they do in the lawyer. His early participation in the political contests of the State rendered his intellect active, sagacious, and inventive, without extinguishing and paralyzing sentiment and truth—without creating that insatiable ambition for power and place, which so often ends in cold selfishness, a degraded submission to the corrupting details of party drill, and in a dislike for all the private avocations of life.

Mr. Barker's unswerving devotion to the Democratic party was, with him, the offspring of disinterested patriotism. Fearless in attacking its enemies, dexterous in defense, maintaining its principles with rare intellectual resources, he united his name with those great politicians who have rendered that party

formidable and enduring through so many years, and who, whatever may have been their real or supposed political errors, have sustained the democracy, "with poetry, eloquence, and learning; with the graces of wit, the glow of imagination, the power of philosophy, the strength of reason and logic." In the earnestness of debate, in the struggles of the forum, though often opposed by the most distinguished talents, he had few superiors; while as a private citizen, in the social walks of life, he commanded that respect which his abilities secured him at the bar, or in legislative halls. At times, however, his character, public as well as private, was assailed with singular malignity and pertinacity, by those recriminations of party abuse, which unfortunately are so inseparable from political contests, and which to those who are not utterly callous are almost beyond endurance, and in which no term of reproach is too severe, no vituperation too excessive; so that, as has been well said, the history of most politicians can be written in three sentences: They were born—they quarreled—they died.

There was, in the character of Mr. Barker, a frankness which unveiled his faults; thus rendering him vulnerable to the attack of his enemies. But to the keen and quick susceptibilities of his nature, there was allied an independence, which turned the edge of detraction, causing the malevolence of envy, which snarls at all above it, to pass harmlessly by him.

To say that his character was above reproach would simply be saying that he was not human; but to say that he possessed many virtues, many qualities that redeemed his faults, that among the eloquent, the gifted, and the refined, he was always an equal and a favorite—to say that his faults are in oblivion, is no overdrawn panegyric—it is but a truthful appeal to the adorner and beautifier of the dead—the gathering of those pearls which were the rich earnings of his life, for a votive offering to his memory.

George Payson Barker was the only child of pa-

rents who, contented with a small income, were independent—who, happy in themselves, were free from ambition, and "the mad'ning crowd's ignoble strife." The only wealth which they could give their son was the memory of their inflexible integrity, and their unsullied name. He was born at Rindge, in the State of New Hampshire, on the twenty-fifth day of October, 1807. His mother was a sister of the celebrated Dr. Payson, in whom high attainments and rare intellectual powers were blended with the love of God, the love of man, and the love of duty; who preached with power and effect, because he gave himself with a single heart to his sacred office, and who wrote, prompted by "those inspirations which flow from the Rock of Ages."

While George was quite young, Dr. Payson observed in him a mind susceptible of the highest cultivation, and he determined to give him those advantages for an education which the limited means of his parents denied him. One year and a half the doctor himself superintended the studies of his nephew. It was a fortunate circumstance in the life of Mr. Barker that the foundation of his education was laid by the hands of such a mental architect as was Dr. Payson, whose instruction dilated, nourished, and elicited the powers of his pupil's intellect, while it gave ardor to his heart, and quickened his young mind to a consciousness of its onward, lofty nature, of its affinity for all that is beautiful, to raise its aim and hope to progress and enlargement. George was also encouraged by his uncle, to practice those athletic exercises and accomplishments which develop the physical powers, while they give grace and elegance to the person.

Such was the progress which young Barker made in his studies that, in 1823, he was admitted to Amherst College. Soon after his entrance into this institution, an incident occurred, which came near resulting in his expulsion. There was a student in the college at this time, by the name of Collins. He pos-

sessed much physical power, and, conscious of his great strength, he was bold, impudent, and tyrannical to all who did not possess the courage and strength to resent his swaggering insolence. This person soon commenced asserting his supposed superiority over young Barker, who, for the sake of avoiding a collision, submitted patiently to the assumptions of the bully, hoping that time would change his conduct towards him. At length this insolence became so insupportable that George was advised, by one of the students, to resent this treatment, even at the expense of a fight, "for you must not submit to this conduct any longer," said he.

"If I fight him I shall be expelled," was the reply.

"I don't believe you will be expelled; at any rate you must take your chances on that, for you cannot remain here, under these circumstances."

"I will report him to the faculty," said George.

"And be laughed at by all the students in the college," said his friend.

"Well," said Barker, after a moment's reflection, his fine eyes flashing fire, "the next time Collins gives me any of his insolence, I will thrash him, or he shall me, expulsion or no expulsion."

"Are you sure you can do it?" asked his friend.

"Wait and see;" was the laconic reply, and the young men parted.

The next morning as Barker, in company with several of the students, was about entering the chapel, at the hour of morning prayer, Collins came hastily up to him, and attempted to crowd him from the walk. Failing in this attempt, he made another, but without success.

"Do you dare brave me in this way?" said Collins, enraged at the firmness with which his attempt was resisted.

"I do, sir; and I dare do more," said Barker.

"And pray, Mister what's your name, what do you propose to do?" said Collins.

"To tell you that you are an insolent puppy!" was the reply.

"Take that," said Collins, striking Barker in the face with a pair of wet gloves which he held in his hand.

The next instant he received a blow from Barker which sent him reeling and bleeding to the ground. Recovering himself, Collins sprang at his assailant with the fury of a tiger; but he had now found his match, and another heavy blow again prostrated him upon the ground. This time Barker followed up his advantage; planting his knees on the breast of the enemy, he prepared for further vengeance; but a cry for mercy now arrested the uplifted arm of George, instantly bringing back all the generous impulses of his nature. Releasing his now thoroughly conquered foe, he aided him in regaining his feet. Collins did not attempt to renew the contest, but slunk abashed and ashamed to his room. Fearing expulsion, he soon after left the college.

Barker was summoned before the faculty to show cause why he should not be expelled for disregarding one of the rules of the college. He defended himself with such spirit and ability, that he won the admiration of the tribunal before which he stood. After his relation of the affair was concluded, he was asked by the president of the college, what he supposed his uncle, Dr. Payson, would say about his conduct?

"I don't know what he would say, but I know this, had he been in my place, he would have represented the church in two aspects," was the reply.

"What two aspects of the church would he have represented, sir?" asked one of the professors present.

"The church militant, and the church triumphant; for he would have fought Collins as I did, but he would have thrashed him much worse than I did, or else I am mistaken in the blood of the Paysons," said George.

"Young man," replied the president, endeavoring to suppress a smile, "your uncle is a man of peace"—

"And of spirit," said George.

"Do not interrupt me, sir," said the president. "As I was saying, your uncle is a man of peace; he fights with the sword of the spirit, but with no carnal weapons, in obedience to that awful voice, which bade our fathers be nearest of the congregation to the vision. In future, curb your passion, and do not attempt the heroism of Hercules and Thesus. With old Polonius, I will now say, 'beware of entrance to a quarrel.'"

"I followed the advice of Polonius to the letter, and endeavored to avoid 'an entrance to a quarrel, but, being in, I bore it that the oppressor may beware of me.' Was not that his advice, sir?" said George.

"You have made a good defense, sir,—a defense which smacks of the lawyer. Your uncle, I fear, will find you a disciple of Blackstone, instead of a student of theology. We excuse you this time, because the provocation which moved you was great."

With these remarks Barker was dismissed from further censure. This was the only quarrel in which he was engaged while at Amherst.

He was regarded as one of the most promising students in that institution. In the various literary exercises in which he engaged while there, he won the commendation of students and faculty. Dr. Payson was a warm personal friend of the late Dr. Nott, of Union College. Anxious to place his nephew under the instructions of that truly eminent scholar, he procured his honorable discharge from Amherst, and in October, 1826, he was regularly entered a student at Union College; here he maintained the high reputation which he had gained at Amherst. Unfortunately, however, when he had been at Schenectady a half year, pecuniary embarrassments overtook his uncle, and during the remainder of his time in college, he was mainly dependent upon his own resources for support. But accepting this new turn of affairs with cheerfulness,

he encountered the difficulties in his way with that determination which caused them to yield before him.

Having decided to adopt the legal profession for his future occupation, he entered his name as a student at law, in the office of Hon. Alonzo C. Paige, of Schenectady, an able and distinguished member of the New York State bar, the author of Paige's Chancery Reports, and subsequently one of the justices of the Supreme Court of the State, for the fourth judicial district. He was a lawyer of extensive and varied learning, an efficient and gifted writer—a judge of great judicial ability blended with that high-toned courtesy which rendered him a favorite with the profession. It was a fortunate circumstance for young Barker that he made the friendship of this eminent lawyer. Mr. Paige at once appreciated the active mind, the abilities and the industry of his student, and therefore encouraged and assisted the young man in various ways.

Devoting all the time he could spare from his other studies to the law, he soon gained sufficient legal knowledge to enable him to successfully try causes in the minor courts of Schenectady.

The first case which he attempted to try, was in the defense of several college students arrested for a riot. Appearing before the magistrate on the day of the examination, armed with his authorities, he boldly took his seat at the table opposite the counsel for the prosecution, who was a lawyer that in justices' courts had attained considerable notoriety. At first the lawyer regarded his young antagonist with contempt; he even attempted to try his wit upon "the unfledged nursling of the bar," as he called Barker. But he soon found in his young antagonist "a foeman worthy of his steel." When the prosecution closed the evidence, George moved for the discharge of the prisoners, on the ground that no riot had been established within the purview of the law. He sustained

his points with an ingenious argument fortified by competent authority, and the court sustained him.

This trial was witnessed by a large number of students and many other spectators; its result placed George conspicuously before the public, while it rendered him famous in the college. From that time, he had more retainers than he could possibly attend to; and though his receipts from them were considerable, they were not sufficient to defray all his expenses, and he was obliged to incur a small debt to the college, which in a very short time after graduating he promptly paid.

Among his classmates were the late Preston King, Hon. Rufus W. Peckham, W. W. Campbell, Minthorne Tompkins, Ambrose Stevens and other gentlemen who are now, or have been, eminent before the public. Several gentlemen who afterwards became his fellow citizens at Buffalo were in college with him, members of a junior class.

On the 27th day of July, 1827, Mr. Barker graduated with honor. He delivered a commencement oration which revealed the energy and power of his mind —his refined taste, original thoughts, robed in a well tempered imagination. Soon after graduating, he visited Buffalo; so pleased was he with the appearance of the village, as it was then, so palpably did he behold its future business developments, that he decided to make it his future home. On leaving Schenectady, Mr. Paige gave him a letter of introduction to the late Stephen G. Austen, Esq., a leading lawyer of the Buffalo bar, in whose office Barker immediately entered as a student at law. With the exception of Mr. Austen, he was a stranger in the new home which he had selected, and his means were exceedingly limited. The struggles and difficulties which lay before him did not impede his progress; they rather accelerated it. He at once engaged in the trial of causes before courts held by justices of the peace in the village, and in various parts of the county. The experi-

ence of several years' practice in these courts while in college, rendered him a strong advocate before them.

Hon. Millard Fillmore was then a young lawyer, just admitted to the bar; he was often an opponent of Barker, and it is said by those who witnessed their early professional contests, that frequently, in the trial of a cause before a justice and a jury, intellectual powers and legal learning were exhibited by them which would have been creditable before any court. These young men were entirely different in their minds and intellectual development.

As a speaker, Mr. Fillmore did not possess that brilliancy—that electrical influence over his auditors —which Barker did. But he possessed in a high degree, that weight and strength of intellect, that power of discovering what is prominent and commanding in a subject, and then seizing upon its good points, and of throwing lesser matters in the background; thus securing unity and distinctness of impressions, and as a consequence, a powerful influence over his hearers. His arguments were always remarkable for the soundness of the principles on which they were based. He was the untiring, ever-watchful sentinel, who guarded his subject, and protected every avenue through which an opponent could approach it. These characteristics distinguished his legislative speeches, and tended to strengthen those able, learned and dignified State papers which emanated from his pen, in those days, when, as an American statesman, he stood conspicuous before his country and the world.

Mr. Barker invoked in support of his arguments, not only the muse of poetry, but the assistance of a subtle philosophy, and an eloquence which fascinated, charmed and subdued. The career of these young men, thus commenced, led to their future eminence and distinction; the one to be admired as the lawyer and legislative orator, the other to be advanced through all the spheres of official position, until he occupied the executive chair of the nation. Both of

them are characters worthy the imitation of young men. They were each the artificers of their own fortunes, each attained their eminent positions unaided by friends or wealth. Their lives and career attest the glory of our institutions, proving the couplet of the old poet true:

> "'Tis a common proof
> That lowliness is young Ambition's ladder."

With untiring energy and industry, Barker sustained himself with credit and honor until October, 1830, when he was admitted to the bar. He had been a close and ardent student,—with his legal studies he had investigated the politics of the nation, the origin of parties, he had carefully marked their distinctive characteristics, and their influence. From reason, conviction and inclination, he early attached himself to the Democratic party.

George J. Bryan, Esq., in his interesting memoir of Mr. Barker, thus speaks of his early politics:

"At the time of his arrival in Buffalo, the State was agitated by the conflicting strife of three political parties: the Jackson, or Democratic party, the National Republicans, and the Anti-Masonic party. In his district, the eighth senatorial, the Anti-Masonic party prevailed by a very large majority, over both the others, and the Democratic party was the smallest of the three. Actuated by no motive but principle, he did not hesitate in which of these parties to enroll himself; regardless of interest, immediate or remote, and fully sensible of the hopeless minority of the Democratic party, he fearlessly entered its ranks, and with all his energy, zeal and ability, entered into the support of General Jackson and the principles of the Democracy."

There was something in the name and fame of "Old Hickory," as he was familiarly called in those days, peculiarly attractive to young and ardent minds like Barker's; nor can it be denied that the experienced,

the middle-aged and the old, were equally fascinated by the prompt and undaunted valor and Roman heroism of him who in youth swore "by the Eternal," that he would make his way to fame.

Immediately after being called to the bar, he formed a copartnership with his friend and patron, S. G. Austen, Esq. Though the Erie bar had not attained that high reputation for ability which has since distinguished it, yet at that period, Barker was obliged to contend with men of eminent and powerful abilities, experience and learning; but he entered the arena with confidence, and he at once assumed a position of great respectability at the bar.

The first official position which he occupied, was that of clerk of Buffalo village, to which position he was appointed in 1829. This office did not in any degree interfere with his legal labors, and his professional advancement was unusually rapid. There were in the character and manners of Barker features which were highly attractive; prominent among these, was the singular grace of his conversation which abounded in wit, fully instinct with a variety of knowledge, diversified with reading and anecdotes of rare interest. There were times in the latter part of his life when he was not in a pleasant humor—times when a habit which all who knew him regretted, caused clouds to settle over a temperament bright, clear, and, at times, even beautiful.

The selfishness with which he was sometimes charged, did not really exist in his character. Those who knew him best, insist that he was generous to a fault. An instance is related which occurred in his early practice that illustrates very many of the tendencies of his character.

In October, 1832, he was detained at Albany for two or three days, awaiting the arrival of certain persons with whom he had important business. At this time a Court of Oyer and Terminer was in session in that city, at which the late Judge James Vander-

poel presided. The next morning after his arrival, he sought the court room for the purpose of passing away the time in observing the proceedings of the court. His route led him by the old Albany jail. Just before reaching that grim receptacle of crime and misery, two officers, having in charge a pale young man, apparently about twenty-one years of age, came from the prison, stepped upon the walk directly in front of him, and moved in the same direction he was going. The prisoner was of middling size, slender in form, with agreeable, pleasant features. As he reached the street, the pleasant sunlight, the pure, soft air of that October morning, seemed to exhilarate him, and his dark eyes glanced with something like happiness, as he lifted them to the clear sky, "where all things are free." The three persons walked with a rapid pace towards the court house; they had proceeded but a short distance, when they were met by a very respectably appearing, decently clad woman, about forty years of age. The moment her eyes fell upon the prisoner, she sprang forward and clasped him in her arms, exclaiming,

"O George! George! My boy! my son!"

The sudden appearance of the woman caused the officers to halt.

"Mother, why did you not wait at the court house for me?" said the prisoner, endeavoring to smother his emotions.

"Because I did not see you there, George; and I thought perhaps you might not have your trial to-day, after all, and I started to see you at the jail. O my boy! my darling!" said the poor woman, her voice now broken with sobs; "are they going to try you now?"

"Yes, mother, I am to be tried to-day; but calm yourself, I trust all will be well with me, for God above us knows that I am not guilty," said the young man.

"You guilty, George? you guilty?" O no, no! you are not. You cannot be guilty, you are so good,

so true—there—there now you look just as you used to when on your knees I taught you your first little prayer, in our dear old"—

"Come, come, woman, stand aside, and don't hinder us any longer; the young man is wanted up yonder," said one of the officers, pointing towards the court house.

"O, sir," said the woman, turning to the speaker, "do see that he is not injured—he is innocent, I know he is."

"How do you know that, woman?" gruffly asked the other officer, "maybe you can swear for him."

"Because—because I am his mother, and—and I taught him his prayers and"—

"Yes, yes, we know all about that. You ain't the first good mother that's had a bad boy for a son, a real rum one at that," said the first officer. "Come on, my covey. Twelve men have something to say about your case."

Barker's progress was arrested by this pathetic scene, of which he had so singularly become a silent witness. Deeply touched by the appearance of the mother and the son, he followed them to the court house. Just before ascending the stairs which led to the court room the young man paused a moment:

"Mother," said he, "is Mr. Aikin going to undertake my defense?"

"Not unless we pay him in advance, and—and—we have no money, you know."

"O God, have mercy on me! What shall I do?" said the young man, losing control of himself in his mental agony.

"Come along; don't stop to blubber here. The court will appoint some one to defend you," said one of the officers, seizing the prisoner by the collar, and urging him up the stairs, followed by his weeping, trembling mother.

He was soon seated in the prisoners' box, to await the proceedings of the court.

The young lawyer followed the officer into the court room, and seated himself within the bar. He had now a better opportunity for observing the young man, who had recovered, in a measure, his composure. The pallor which overspread his countenance, had given way to a slight flush; his clear eye, delicate and finely molded features, bespoke intelligence, but not guilt. It was a face to be studied, and it was studied by Barker. "If that young man is guilty of any serious crime, then I am no judge of features," he thought.

Court had not yet opened for the day; a few lawyers were in the bar; the officers in attendance were lounging carelessly on the benches; some of the jury had found their way into their seats, and were conversing in a low tone with one another, occasionally glancing at the prisoner in the box; while the spectators present regarded him as a being whose trial was, perhaps, to afford them some amusement or pastime. The circumstances which surrounded him—the place he occupied—caused them to regard him as a felon who only awaited a trial to be sent to a felon's doom.

Presently a loud rap announced the approach of the judge; the usual proclamation was made, and the court was ready for business.

"Sheriff," said the District-Attorney, "is George Ames in court?"

"He is," was the reply.

"I now move the trial of George Ames, indicted for burglary in the first degree," said the attorney for the people.

"Has the prisoner counsel?" asked the judge.

"Have you counsel, Ames?" asked the District-Attorney.

"No, sir; I expected Mr. Aikin to defend me, but he refuses now," said the young man.

"Why does he refuse?" asked the court.

"Because I have no money to pay him," was the reply.

"Then, as you have no means to employ counsel, the court will see that you have counsel."

Judge Vanderpoel now addressed a respectably appearing lawyer present, and asked him to undertake the defense of Ames, but he declined, alleging that he had pressing business; the court then applied to another, who also declined; finally there was no one in the bar who would undertake the defense. The judge appeared to be puzzled.

"Gentlemen," said he, "I do not desire to compel any person to defend this man, but"—

Just at this moment a small sized, sharp-featured, shrewd appearing lawyer entered the bar. There was a kind of avoirdupois look about him, and his eyes appeared like a pair of nicely balanced scales, made for the purpose of weighing the amount of coin one happened to have in his possession. As they glanced at a person, his eyebrows were raised or lowered, in proportion to what he conceived the man had in his pockets, and they seemed to say: "Ah, he has so much;" or, "Oh, he has only a—ah, let me see again, oh, yes, has only a very little." He was well known at the Albany bar forty years ago, as a thriving lawyer who forgot everything in his fees.

"Mr. K.," said the judge, addressing this lawyer, "the court desire you to undertake the defense of George Ames, the prisoner at the bar."

"Ah, yes; your honors can always command my poor services in that way, but I have seen the prisoner before, and I think in view of his circumstances—his means—I mean, the nature of his great offense, that he had better plead guilty and done with it."

A sob of deep, heart-broken anguish, resounded through the court room; it was from the poor mother who heard in this the knell of her son's doom.

"If the court please, I will undertake the defense

of that young man," said Barker, in a voice whose tones attracted the attention of every one in the court room.

"The court are unacquainted with you, sir, and we desire that the prisoner should be ably defended," said the judge, in a tone that clearly indicated his surprise.

"If your honors please, I said I would undertake his defense, and I now say that he shall be fairly, if not ably defended; and I say more, he shall not be convicted unless his guilt be made apparent."

"Do you desire the assistance of Mr. K.?" asked the judge.

"No; if your honors please, I will assume the entire responsibility of this defense."

The judge signified his assent.

Edward Livingston was then District-Attorney of Albany County. He was learned and eminent in his profession, eloquent at the bar, a pleasing speaker in the popular assembly, a politician of rare capacity and many executive endowments, a formidable prosecuting officer. He represented Albany in the Legislature several years, and in 1837 was chosen Speaker of the Assembly, discharging the duties of that distinguished position with marked ability.

Such was the man with whom the young lawyer was about to contend.

"I ask your honors to postpone this trial until to-morrow morning, to give me an opportunity of consulting with the prisoner," said Barker.

As Mr. Livingston made no opposition to this motion, it was granted.

Language cannot describe the surprise, joy and gratitude of the young man and his mother at this unexpected appearance of a defender. A short consultation with them, convinced the lawyer that his client was not guilty, although he was surrounded by a train of circumstances which seemed to point with

almost indubitable certainty to him, as a young but hardened criminal.

He was the only son of the poor woman present, and she was a widow. Their residence was at Fort Ann, in the County of Washington. A few days before the commission of the crime with which he was charged, he came to Albany for the purpose of obtaining employment; here he soon made the acquaintance of a very friendly appearing man, who apparently took much interest in him and kindly offered to assist him in obtaining employment. One evening he was invited by this friend to accompany him and examine some personal property which was then in a certain building that he had rented. Although it was quite late when this proposal was made, George assented. On their way, his friend overtook two persons with whom he was acquainted, and whom he invited to accompany them; they consented; and in a few minutes the young man and his companions found themselves in the rear of a large building. His friend now informed him that he greatly desired to enter the building, which was his store; but as he had forgot the key, he produced a small iron bar which he handed to George, directing him to pry open the shutters to one of the windows and force his way into the building, promising to reward him very liberally for his trouble. In a moment, the young man understood that he was in the presence of burglars, and, horror stricken at the thought, he attempted to rush from their presence; but ere he had made two steps, he received a heavy blow upon the head, which felled him to the earth insensible. When he returned to consciousness, he was at the police office, with a bandage about his head. As soon as he was able to be moved, he was conducted before a magistrate, and his examination took place. From the testimony, he learned that the building was broken open and entered, and that he was one of the persons charged with the crime of breaking it open. All of the wretches succeeded in making their

escape, excepting one who was arrested the next morning; turning State's evidence, he implicated young Ames in the crime, alleging that he entered the store, that while there, he stumbled over some object and fell; his head striking the corner of the counter rendered him insensible, that when they made their exit from the building they removed their wounded companion, intending to convey him to a place of secrecy until he recovered; but when they had proceeded a few paces from the building they were alarmed and hastily fled, leaving him on the ground where he was discovered by the police. Such was the evidence of the man before the magistrate.

Soon after his incarceration, George wrote to his mother; the poor woman came to the city, employed the lawyer who has been referred to, but because they had no funds to pay him he abandoned the defense. By a singular intervention of Providence, George P. Barker had now become his counsel. The story of the young man carried conviction with it, and aroused all the generous sympathy of the young lawyer's nature. Ascertaining the name of the surgeon who dressed the wound of Ames, he immediately called upon him; he was a gentleman of intelligence and skill; he distinctly recollected the circumstance of dressing the prisoner's head, and the nature of his wound, and did not hesitate to state that it could not have been inflicted by a fall—that it must have been the result of a blow from a club or some heavy instrument.

The next morning the trial began. Mr. Livingston conducted the prosecution with great ability; he firmly believed the prisoner guilty, and therefore omitted nothing that tended to convict him. Entering upon the trial without any introduction to the young stranger who thus singularly became his opponent, he did not stop to consider or care who he was. The case, however, had proceeded but a short time before he was aware that he had no common intellect to deal

with, and he conceived a high respect for him, whoever he might be.

The cross-examination of the convict witness was most searching and effectual. The keen eyes of Barker seemed to pierce his very soul, from the commencement to the end, they were not removed from him. At first, he sustained himself with a balance and composure which seemed to baffle his interrogator, but at length, he stumbled, hesitated, and became confused, and when he left the witness box, it was evident that his testimony had been materially shaken. The cross-examination of the proprietor of the store which had been entered, elicited the fact that no blood was found in the store; that the corner of the counter against which the witness had testified Ames had fallen, did not exhibit the least appearance of any such occurrence. The officer who first discovered the prisoner on his cross-examination testified that on the spot where his head rested, a large pool of blood had gathered.

At length the District-Attorney rested. Barker, in a short, plain and concise statement, presented the theory of his defense to the jury. The only witness whom he called was the surgeon, whose evidence corresponded with the statement he had previously made, establishing the fact that the wound on the head of Ames could not have been made as the witness for the people had sworn—that it was inflicted by a club, or some heavy instrument, and he gave his reasons on which his opinion was founded, clearly and intelligibly.

With this evidence, the young lawyer rested his case and went to the jury. In his whole subsequent professional career, he never made a more successful or a more brilliant defense. In the language of one of the journals of the day, "his summing up of the evidence was a splendid effort." Many of the jurors were present when he made his generous offer to defend the prisoner, and they were conscious that he

was acting from the sympathy and generosity of his nature; they therefore believed him sincere in his statements. He contended that there was no evidence whatever against the young man, except that he was found wounded near the place where the crime was committed—that the uncorroborated evidence of the convict witness was not sufficient to convict; besides, that witness was contradicted by the surgeon, and also the circumstances. He dwelt with much emphasis upon the fact that no blood was discovered in the store, because the wound was of such a nature that it must have bled copiously when it was first received. That a large quantity of blood was discovered under his head when found by the officer, established the fact that he received the blow where he fell; especially as there was no evidence that blood was found in any other place.

Those who knew George P. Barker, can well understand the nature of his address and its effect upon the the jury. Mr. Livingston's reply was all that could be expected from a lawyer so distinguished; but the defense of his opponent had taken him by surprise; it was an effort which would have been creditable to the most eminent member of the Albany bar, and he saw that it had made an impression upon the jury. His argument was keen, searching, and profound. The charge of Judge Vanderpoel was, as the charges of that learned and able judge always were, a close adhesion to the law and his duty, impartially and fairly discharged.

The jury retired, and after an hour's absence, returned into court with a verdict of not guilty. The great, the rich reward of Barker was the almost frantic joy with which the verdict was received by the mother and son.

"The God of the widow and the orphan has sent you to us, sir, in our distress, and His blessing will descend upon you through all your days. We have

no money with which to reward you; I have seen better days, but now I can only thank you from the very depth of my heart of hearts," said Mrs. Ames, on taking leave of Mr. Barker.

"Some time I shall reward you for what you have done for me," said young Ames; the glittering drops which stood in his eyes, evidenced his deep gratitude; and thus mother and son took their leave of their generous benefactor.

Years passed away, and this event was nearly forgotten by Barker, in the vicissitudes of his professional and political life. One morning in the winter of 1836, while he was member of Assembly, a well dressed, gentlemanly appearing man called at his room in Albany.

"Do you not remember me, Mr. Barker?" said he.

"I do not," was the reply.

"My name is Ames—George Ames—whom you once defended against a serious charge in this city," said the man.

Another glance at his visitor convinced Barker that the prisoner whom he had defended for burglary, at Albany, was before him.

"I learned that you were in the city, and I could not refrain from calling upon you," said Ames.

He then in a few words informed his benefactor that he was a well-to-do farmer, that fortune had smiled upon him and given him prosperity. After conversing a half hour, he arose to take his leave.

"Here is a small package which my mother, my wife, and myself have made up for you. Do not open it until I have left—I trust it will convince you that my words to you have not been forgotten."

He took his leave and Barker opened the package; to his surprise, he found it contained a bank bill for two hundred dollars.

Ames and his defender have both passed beyond the trials of earth; but a son of the former still survives, who treasures the name of George P. Barker

with a sort of poetic reverence. To him the author is indebted for one of the most touching and agreeable incidents in the life of a distinguished lawyer. The trial which has been described resulted in a life friendship between Livingston and Barker.

In the autumn of 1831 the latter received the nomination for member of Assembly for the County of Erie. His party was then in the minority, as we have seen, yet in Buffalo he received a very respectable majority, while in the county he greatly reduced the usual majority of the dominant party. In June, 1832, the partnership between Messrs. Barker & Austen was dissolved, and the former entered into a business arrangement with John T. Hudson, a very respectable member of the Erie bar. Barker was soon after appointed Attorney for the city of Buffalo, and early in the year 1833 he received the appointment of District-Attorney for the County of Erie.

In discharging the duties of this office, he was brought more conspicuously before the people. He exhibited such remarkable powers as an advocate, such a polished yet practical and pointed elocution, that he at once arose to a commanding position at the bar, and participated in the honors and emoluments of his profession. It was a happy and peculiar quality of Mr. Barker, as a lawyer, to excite the esteem and command the confidence of the people.

"I like that Barker," said a farmer from one of the distant towns in the County of Erie, on his return from Buffalo, where he had been attending court as a juror; "I like him because I think he is honest, that is, if a lawyer can be honest."

After discharging the duties of District-Attorney for three years, Mr. Barker resigned; and that accomplished orator and lawyer, Henry K. Smith, was appointed in his place.

In the summer of 1834 he was married to Miss Abby Coit, an accomplished and highly respected lady of Buffalo. His marriage greatly enhanced his

happiness. In the domestic circle he ever found a refuge from the cares and labors of his professional and political life.

At an early period of his political career Mr. Barker became the leader of the Democracy in the County of Erie. His political sagacity, his intrepidity of character, and cool, discriminating judgment, peculiarly qualified him for that position, and under his guide the Democrats of that county soon became the victors, emerging from an almost hopeless minority.

In the fall of 1835 he was again nominated for the Assembly. It has been tersely but truthfully said, that envy, like a sore eye, is injured by anything that is bright. This proved true in the case of Mr. Barker. His rapid advancement in his profession, his many shining qualities as a speaker, presented him as a mark for envy, hatred and malice, to those who felt their inferiority to him. To defeat him every effort known to political warfare was resorted to. From the fledgling politician, who, like the young bird that could bite before it could fly, to the veteran, that knew when and where to fasten his fangs of malevolence, he was assailed with the most violent and bitter attacks.

The canvass, however, resulted in the election of Mr. Barker by a very decided majority, and the County of Erie was added to the Democratic counties of the State by his popularity.

He entered the Legislature, January 5th, 1836. Such were the circumstances under which he was elected, that they tended greatly to enhance his popularity in that body. In both branches the Democratic party were largely in the majority; and he thus commenced his legislative career with every prestige of party success in his favor. William L. Marcy was then governor, John Tracy, of Chenango, was lieutenant-governor, and Charles Humphrey, of Tompkins, was speaker of the house. As a presiding officer Mr. Humphrey had few equals in the State. He was a lawyer of profound understanding, of fine par-

liamentary abilities, possessing that quick and rapid perception so necessary to the presiding officer of a deliberative body, while his manners, address and comprehensiveness of mind, adapted him to the position which he occupied.

Mr. Barker was now in the twenty-eighth year of his age; he had already attained a high position as a lawyer, and the legislative abilities which he developed in the Assembly gave him a high reputation as a legislator. Although some of his speeches had a sort of parliamentary preamble to them, a certain air of affected modesty and ostentatious trifling, yet he enriched every subject to which he applied himself, by the vigor of his thought and the beauty of his language. His speeches were always better than his writing.

Young as Mr. Barker was, on his first entrance into the Assembly he was honored by the second position on the Committee of Ways and Means and that of Colleges and Academies. His industry and devotion to the duties thus imposed upon him were soon publicly acknowledged.

Among the members of this legislature was Preston King, who after that period was elected to many high and distinguished positions. He was then the leader of the Democratic party in the House; perfectly skilled in all the detail of politics and the subtleties of parliamentary proceedings, a close, terse and methodical debater, it is not strange that he should have occupied a commanding position. Richard P. Marvin, now and for many years a distinguished judge of the supreme court for the eighth judicial district, Mark H. Sibley, Luther Bradish and George W. Patterson were also members of the House at this time.

Among such men George P. Barker made his entry into public life. His first speech was delivered January 16th, 1836, on the bill for the relief of the city of New York, which had been a short time previously visited by a terrible fire. It was characterized by

great modesty, yet it commanded the attention of the House for its firmness and high-toned liberality. This speech was followed by other speeches, delivered at intervals during the session, all which tended largely to enhance his popularity. In those speeches he exhibited that clear discrimination, that facility of comprehending seemingly anomalous facts, that knowledge of political economy and statistics, which are not often united with a mind so imaginative as his. They were struck out in the conflict of mind with mind, in the heat of debate, without that preparation which a writer would have given to the subjects; and yet they have the methodical arrangement, the elaborate strength of a carefully prepared essay; and the thought may be indulged, that had he lived the recluse student, had he turned his attention to recondite studies, he would have enriched his country's literature, or added new treasures to science; but the bar would have wanted one of her brightest ornaments.

Without attempting to follow him through all his legislative career, it is perhaps enough to say, that in every position or phase of that career he was fully equal to each emergency that presented itself. Sometimes he indulged in an exuberant humor; sometimes his vanity led him to exhibit the facility with which he could round a period, the dexterity with which he could argue, object, or rejoin; but this was rare, and often when apparently most unprepared he exhibited fresh powers of mind which had not before been exerted.

On retiring from the Legislature, his profession became the all-engrossing theme of his life. This was partly from professional ambition, and partly from that characteristic which absolutely compelled him to enter ardently into anything which he undertook to do. He carried to the bar a knowledge of the law, which gave him great power and weight, and yet per-

haps his strength did not consist so much in his legal learning as in his ability to deal with the facts and circumstances of a case before a jury.

It has been said that he was not a laborious student, but it is certain that he devoted much time to silent study—that he read with pleasure and profit the productions of elegant and accomplished scholars, historians and logicians, while he was a close and critical legal student. His legal arguments, prepared for the court, in banc, abounded with the knowledge, the philosophy, and the reasons of the law; thus proving that there were hours which he devoted to the severest mental labor.

In the autumn of 1836, his political friends tendered him the nomination for Congress, but so engrossed had he now become with his professional duties, that he was compelled to decline.

In April, 1837, he formed a copartnership with the late Seth E. Sill and Seth C. Hawley, under the firm name of Barker, Hawley & Sill. This firm soon became distinguished for the extensive legal ability which it combined. Mr. Hawley, however, retired from it in the fall of 1839, and the business was continued under the name of Barker & Sill, until the former was elected to the office of Attorney-General, in 1842.

Mr. Sill, on the adoption of the constitution of 1846, was elected a justice of the supreme court for the eighth judicial district. He was a lawyer of fine legal attainments—a judge who adorned the bench—and whose opinions enriched the legal learning of the State. He died on the fifteenth day of September, 1851; his death was regretted by the bench and bar throughout the State.

In the spring of 1840, the first popular election for a Mayor of Buffalo occurred. Mr. Barker was nominated by the Democracy as their candidate for that office. Sheldon Thompson, a highly respectable citi-

zen of that city was the opposing candidate. The canvass was closely and even bitterly contested. The great wealth, extensive acquaintance, and personal merit of Mr. Thompson, with the additional circumstance, that he was connected with the dominant party in the city, rendered him a powerful competitor. Under all these disadvantages, Mr. Barker entered the contest, and such was his popularity, that he was defeated by a majority of only ten.

In the presidential campaign of 1840, he entered the canvass with all the ardent zeal of his nature. The brilliant and stirring speeches which he delivered in various parts of the State, aroused the Democratic legions to renewed action; until they moved with their accustomed activity over fields consecrated by former victories, inspired by the genius of their great party leaders; but in vain, the popular tide was against them; — the new tactics of the Whig leaders prevailed, and the Democratic party was everywhere defeated.

But the Democracy of New York retired in good order from the field, and in the election of 1842, they were once more triumphant in the State. To this result, perhaps, no man in Western New York contributed more than Mr. Barker.

There were an unusual number of men of talent elected to the Assembly at this election; among whom were Horatio Seymour, John A. Dix, Michael Hoffman, and Samuel G. Hathaway.

At a caucus of the Democratic members of the Assembly, held February 4, 1843, Mr. Barker was nominated for Attorney-General; his competitors being no less distinguished personages than Samuel Beardley and Robert H. Morris. The former had discharged the duties of that office with singular ability, during the previous term; but Mr. Barker's eminent services in the preceding campaign and in that of 1840,—his brilliant reputation as a lawyer and orator, rendered

him the most popular candidate for the office, and, on the third ballot, he was nominated. When this result was announced, the audience gave a long and rapturous cheer, exhibiting the deep regard which the masses entertained for the name of George P. Barker.

Sanford E. Church, the present Chief Justice of the Court of Appeals, though then one of the youngest members of the House, contributed much to this result.

In the fall of 1842 Mr. Church was elected to the Assembly from the County of Orleans, which was strongly Whig in its sentiments, and, of course, opposed to him; his election was due to his own great personal popularity — a popularity which has never deserted him. The speech which "the young member from Orleans" made in favor of Mr. Barker greatly aided him.

One of the most pleasant circumstances connected with Mr. Barker's appointment, was the manner in which the intelligence of the event was received by the Buffalo bar, the leading members of which united in a letter of congratulation addressed to him, in the most delicate language referring to his high professional standing, and his popularity in private life, regretting that "the relations which had so long, and so happily continued between them, should for a time be terminated," concluding in an invitation to partake of a public banquet with them, at some time to be named by him.

Mr. Barker replied to this note in a happy and eloquent manner, exhibiting his deep appreciation of the friendship which prompted this congratulation. He felt compelled to decline the invitation to join in the banquet.

His career as Attorney-General loses nothing in comparison with the great and gifted lawyers who preceded him. At the bar of the Supreme Court in banc, at the various circuits of the State, he came in contact with its ablest lawyers, and his friends had the proud satisfaction of knowing that the greater the

occasion, the greater appeared his capacity for meeting it.

In the fall of 1843, a great Democratic meeting was held in the City of Buffalo; by a general invitation, Mr. Barker was invited to address it. Accepting the invitation, he delivered a speech which is still fresh in the recollection of many who were present. Its power of appeal was unequaled, and told with great effect upon his audience. In the language of *The Buffalo Courier*, "There were passages in it that woke the fiery enthusiasm of the old Democracy of Buffalo—there were also passages that brought unbidden tears to the cheeks of veterans in the Democratic ranks, who surrounded him; it was full of feeling and truth—it went to the hearts of those who heard it."

In the year 1845, he was again appointed District-Attorney for the County of Erie; but his health, which for some time had been impaired by his constant devotion to business, rendered it difficult for him to discharge the duties of the office, and his exertions to do so were at the expense of his vital energies; but he did not falter in the discharge of his duties until the nineteenth day of September, 1846. On that day, as he was commencing the trial of an important suit, he was seized with convulsions, which, after some duration, were followed by a heavy slumber. At length he recovered, but with no perceptible diminution of his mental powers, excepting a certain depression of mental spirits.

The bright, cheerful, almost electrical flow of spirits was gone, the exquisite playfulness of his nature was changed. There were, doubtless, excesses which led to this—the one vice of social life—which delights to fasten on the brilliant and gifted; as it were, to gloat over the stupendous ruins it has made.

After his recovery, he again entered the professional arena with renewed vigor; but in March, 1847, he was again attacked with the same disease, but with

accelerated violence. His strong and vigorous physical nature, however, enabled him again to triumph over disease, and to once more resume the duties of his profession. But it was plain to his friends that the inevitable destroyer had marked him for its victim, and they urged him to relinquish all business, and to devote his time to travel.

For a long time he resisted their appeals; at last he yielded, and he visited New England—the home of his youth—and amid the thronging memories of the past, he seemed to forget the disease which had preyed upon him. After an absence of three months, with improved health, he returned to his home, and, contrary to the advice of his friends, once more resumed the duties of his profession. But alas; its duties were so severe that a relapse soon ensued, and he was once more prostrated by disease. Like the soldier who returns to the field ere his wounds are healed, so Barker, before his disease was removed, left his room to enter again those forensic contests, in which so many years of his life had been spent.

The last case which he ever conducted at the circuit, was the People against Pollock, indicted and tried for attempting the life of E. R. Jewett, one of the proprietors of *The Buffalo Advertiser*. Pollock was a young midshipman. His social relations and the intrepid nature of the attempted assassination imparted to the case unusual interest.

Mr. Fillmore appeared for the defendant. The effort which he made has seldom been equaled at any bar. The best efforts of his long and varied professional life did not possess more strength and power. It was singular that Mr. Barker was the first antagonist whom he encountered at the bar in the commencement of his professional life. Devious, ardent and devoted had been the struggle of each since that period; and now, at that very bar, where, amid the ambition and enthusiasm of their youth, they had met as contestants, they again met, for the last

time. It was the destiny of one to fall in the midst of the strength of his manhood, while the other retired from the arena, to be raised, by a great Republic, to its highest honors, and in the enjoyment of rest unbroken by the toils of public life, in his dignified retreat from the scenes of ambition, the cares of the statesman, to continue in the affections and esteem of a people who ever delighted to honor him.

Mr. Barker, though in feeble health, followed Mr. Fillmore's address to the jury. At first his powerful intellect seemed to glimmer with uncertain light, but at length it began to send forth a steadier flame. The artful regularity, the polished excellence, the exquisite modulation returned, and those powers which had been passive under disease resumed their force, and George P. Barker was himself again. Again, the court, bar, jury and spectators, were held entranced by an oratory which had ever filled them with pleasure and delight. But it was the brilliant gleam of the intellect flashing out for the last time over the ruins of a prostrated physical nature, the bright sunbeams playing around the caverns of death.

With powerful vigor, with the animated elocution of his best days, he pressed the conviction of Pollock. He succeeded, and the young man was sentenced to the State prison for a long term of years. Through the intervention of friends he received a pardon after the accession of Governor Young to the executive chair of the State.

Though Mr. Barker's health was exceedingly feeble, he represented the County of Erie in the State Convention held at Syracuse, September 29th, 1847, a few weeks after the trial of Pollock. This Convention attracted a large attendance of the most distinguished Democrats in the State; among whom were Martin Grover, now a judge of the Court of Appeals, James C. Smith, a distinguished lawyer, and now an eminent judge of the Supreme Court of the State, and many others. It was with pain that these time-honored as-

sociates of Barker witnessed the ravages which disease had made upon him.

The Convention was held at that period when the great schism in the Democratic party began to manifest itself as a forthcoming event. This gave the assembly an interest, which was keenly felt by Barker. He took a conspicuous part in its organization, helping to prepare resolutions, but he was compelled to leave before its adjournment. Returning home, he submitted to the most skillful medical treatment, and the tenderest attention was bestowed upon him; he gained so much in strength that the hopes of his friends were revived, and he was enabled to give some trifling attention to such matters of business as seemed impossible to disregard.

In the ensuing October the General Term of the Supreme Court for the eighth district commenced its session at Buffalo. During this term Mr. Barker assisted in arguing two important causes, at the conclusion of which he left the forum forever. Soon after this he was attacked with a lingering fever, which continued, with various phases, until the 27th day of January, 1848, when he expired.

WILLIAM G. BRYAN.

Characteristics.—Governor Seymour.—Remarks on his Character.—Birthplace.—Parents.—His Early Education.—Apprenticeship to the Printing Business.—Commences the Study of Law.—Obstacles in his Way.—Continues the Study of Law with Judge Taggart.—Admitted to the Bar.—A Partner of General Martindale.—Ogden Land Company Litigation.—Mr. Bryan's Connection with it.—Company Attempts to Remove the Indians from Their Reservation.—Jacob Thompson, Secretary of the Interior.—General Denver.—Caroline Parker, the Educated Indian Girl.—Her Influence in the Controversy.—Mr. Bryan Sustains the Indians.—With Messrs. Martindale and Follett, Visits the President.—Proceedings at Washington.—Mr. Bryan's Connection with the Legal Profession.—His Political Career.—His Character as a Writer.—As Speaker.—His Speech on the Death of Lincoln.—His Speech on Laying the Corner Stone of the New York Institution for the Blind.—Letter of George W. Clinton.—Speech Before the Genesee Agricultural Society.—Lecture on Edmund Burke.—Fennimore Cooper.—Oliver Cromwell.—Mr. Bryan's Marriage.—His Tragic Death.—Funeral Reflections.

EUROPEANS of thought and culture visiting our national capitol express great surprise and disappointment at the absence of eminent ability in our halls of Congress. Neither the Senate chamber, which once resounded with the eloquence of such intellectual giants as Clay, Webster and Calhoun, nor the popular branch of our national Legislature, which in times past was dignified by men of historic reputation, like John Quincy Adams, and John Randolph, of Roanoke, now impress the spectator with any extraordinary respect for the talents and attainments of the men who make the laws and are supposed to govern the destinies of the republic. Neither in statesmanship, nor in

ability as debaters, nor in the graces of scholarship, do those who are at the head of the nation come up to the generally accepted high position conceded to our country among the principal powers of Christendom. We know better than our visitors how to account for this apparent decadence in our nation. We know that so flagrantly corrupt has become the machinery of party politics, that with rare exceptions the best men, the really ablest men in our land are not now as of old to be found in official positions. Yet, neither in the learned professions, nor in the army, or in the navy, nor in those who adorn the mechanic arts, or in the great mass of our business and industrial classes, do we discover any signs of this falling off in the standard of patriotism, intellectual ability, development and progression which is requisite for our continued national advancement. So distasteful, however, to men of superior ability and character is the odious doctrine, that in politics the end justifies the means, that they prefer the independence of private life to that surrender of their self-respect and even honor that is too often demanded of those who seek political advancement. Too often, alas, much too often, as we read of gross corruption among those in high places, are we reminded of the truth of the old adage, that the post of honor is in a private station.

Conspicuous in the long roll of eminent names that have conferred honor upon the legal profession in Western New York, stands that of the late William G. Bryan, of Batavia. His career, and the prominent traits of his character, strikingly confirm the justice of our preliminary remarks. Deriving no dignity or consequence from official position, he, by his own unaided exertions, achieved a reputation as a lawyer, as an orator, as a scholar and a Christian gentleman, which enrolled him among the most honored and revered in our land. In the lan-

guage of ex-Governor Seymour: "He was earnest, able, and chivalric. He made himself felt in every circle in which he moved. He gathered force and power as he moved on in the pathway of life, and I looked upon him as one who was to hold still more marked positions in our State and nation. God in his wisdom took him away when he seemed most needed by his family and State. We can only bow to His decree, and pray that in His mercy He may shape all this for our good."

Mr. Bryan was the son of William and Mary Bryan, and was born in the City of Brighton, England, on the eighteenth day of January, 1822. His father, who is still living, is a man of rare intellectual faculties, and although he has attained the advanced age of seventy-two years, is still in the vigorous enjoyment of all his mental and physical powers. His mother, who died in 1836, was a woman of very superior intelligence, beauty of person, and grace of manner. She realized the ideal of the poet who wrote:

> None knew her but to love her;
> None named her but to praise."

Mr. Bryan's father, believing that there were greater opportunities for the advancement of his children in the United States than in their native land, came to this country with his family in 1830, and after a brief residence in New York and Utica, settled finally in Le Roy, Genesee County, where he embarked in business as a cabinet maker. Appreciating fully the incalculable advantages of education, he afforded to his children the important aids to be derived from the best private schools and academies. Consequently, the early advantages of young Bryan were excellent. They were fully improved, and largely promoted his success in after life. Owing, however, to the financial and general business depression and disasters of 1836

and 1837, his father was unable to continue him any longer at the academy at Le Roy, which he had been attending. And so, with a stout heart and a determination to make his way in the world, at the tender age of fifteen, in 1837, he commenced an apprenticeship to the printing business with D. D. Waites, Esq., then and at present proprietor of *The Republican Advocate*, published at Batavia. It soon became apparent that the profession of the law was the one best suited to his tastes and rapidly developing powers of mind, and he began to shape his studies and reading accordingly. In 1838, at the age of sixteen, he entered the office of Hon. Albert Smith, of Batavia, as a student of law. Never in the days of old, or in the present time, did student enter upon his studies with more enthusiasm, or with a nobler and firmer resolve, or with more hopefulness. His industry was untiring. He allowed no obstacles to discourage him. Teaching a district school by day reading law, history, biography and classical literature in the long, quiet hours of the night, attending lectures, and seeking the society of the learned, refined and pure minded, he soon began to make rapid and encouraging progression. He overcame the want of a collegiate education by his wonderful application, and attained a mastery not only of the English, but of the Latin and French languages. He also obtained a command of eloquence and logic, which ultimately placed him in the front rank of his profession. He entered the office of Hon. Moses Taggart in 1840. The personal kindnesses of the judge so impressed the mind and heart of the youthful aspirant for professional honors, that he became, and continued until his death, one of Judge Taggart's most devoted friends. Quickly and pleasantly glided away Mr. Bryan's student life, and he was admitted to practice when employed in the office of Messrs. Redfield & Pringle, at the land office in Batavia. He retained an interest in the business of

the office from 1847 to 1850, at which time he formed a copartnership with Gen. John H. Martindale, and opened an office under the firm name of Martindale & Bryan. Upon the removal of Gen. Martindale to Rochester, Mr. Bryan, with Hon. Seth Wakeman, established the law firm of Wakeman & Bryan; which partnership, together with the most intimate and cordial relations of friendship, continued until death rudely severed their mutually delightful intercourse.

In the spring of 1851, during Mr. Bryan's professional connection with Gen. Martindale, an exceedingly important litigation was in progress between the Ogden Land Company and the Tonawanda band of Seneca Indians, involving the rights of the Indians to their reservation in the County of Genesee. This reservation comprised twelve thousand eight hundred acres of valuable land. From that time forward, until the final determination of the controversy, Mr. Bryan took an active and important part in the proceedings. In the winter of 1857 one of the actions (that of Blacksmith *v.* Fellows), which had arisen in the controversy, was argued in the Supreme Court of the United States. The Court adjudged that the Ogden Company had no right to enter and settle on the reservation, and could not maintain an action of ejectment to enforce their claims under the treaty with the Indians, but must await the action of the political department of the government, and the actual removal of the Indians by the political power. This decision was announced about the time of the accession of the late President Buchanan to the presidency. Soon after the commencement of his administration, with Hon. Jacob Thompson as Secretary of the Interior, and Gen. Denver as Commissioner of Indian Affairs, the Ogden Land Company applied to these officers to remove the Indians from their reservation. Some years before, during the administration of President Taylor, an attempt had been made to enlist the political de-

partment of the government in measures designed to effect such removal; but those measures were unsuccessful, and the then Secretary of the Interior, Thomas Ewing, had declined to take any steps in aid of the land company. In 1857 their attempt was renewed on the assumed ground that the decision of the Supreme Court had made it the duty of the executive department of the government to interpose and put the company in possession. They were so far successful that Gen. Denver himself went to the reservation, accompanied by a number of the gentlemen who belonged to the land company. Their approach was the first intimation which the Indians and Messrs. Martindale & Bryan had of the new and hostile proceedings contemplated by the government. They immediately repaired to the reservation, and there met the commissioner, Gen. Denver, in a council of the Indians. The interpreter on the occasion was Caroline Parker, an educated Indian girl, and sister of Gen. Ely Parker, the present Commissioner of Indian Affairs. The presiding Chief and Speech-maker of the Indians was William Parker, her father. The proceedings of the Council were intensely interesting. The Indians were alarmed. It seemed as though their long struggle to maintain their hold on the lands where they had been born—which their ancestors had held from time immemorial—which were now claimed under the provisions of a treaty never assented to by a single Tonawanda chief or warrior, as though all their efforts and hopes had been in vain. The Commissioner told them that they must leave; that the Supreme Court had decided against them; and he called on them to declare whether they would go.

The Chief, Parker, replied with composure, that they wished to hear from their counsel before giving him an answer. Therefore, their counsel told them that the decision of the Supreme Court had not been correctly understood by the Commissioner, and that

it was not the duty of the government to remove them. When this declaration was made, the Commissioner said with emphasis that he must have their answer distinctly, would they go or not?

The interpreter, Caroline, who was standing near the counsel of the Indians, spoke hurriedly and apart:

"What shall we do? we cannot go now!"

The counsel replied:

"Caroline, you can but die."

Immediately she turned, and in a few words addressed the Indians in her native language. It was a scene not to be forgotten. The old Sachem, Parker, rose, without the slightest perturbation, and with perfect dignity and determination (he was a large and handsome man), and said to the Commissioner:

"We will not go."

Thereupon, after another short address by Caroline, the Indians immediately arose and left the council-house.

After such a termination of the "talk," of course prompt and judicious action became necessary. And here the energy and peculiar ability of Mr. Bryan were immediately and signally displayed. He knew that the popular heart was in sympathy with the Indians; that justice was on their side; that forcible expulsion would be a hard and repulsive proceeding for the new Democratic administration, of which he had been an earnest and eloquent supporter. At once the newspapers began to give expression to the public feeling. His pen was at work. He procured letters of introduction to the President and Secretary of the Interior, from prominent men of his own party; and when fully prepared, in company with Mr. Martindale, Hon. Frederick Follett, and the Chief, Ely S. Parker, he proceeded to Washington.

An interview was immediately had with the Secretary of the Interior. The Secretary began it with strong impressions that his executive duty required him to

remove the Indians. The discussion was earnest and prolonged during three hours; but it resulted in enlisting the powerful sympathies of the Secretary, and disposed him to co-operate with the Indians in securing by another treaty, the extinction of the claims of the land company. During the whole litigation, it had not been possible for the Indians to controvert the fact, that the land company had acquired the ultimate title to the reservation, which would become absolute whenever in the course of events the Indian occupancy should terminate. The Indians were entitled, when they should remove, to the possession of a large quantity of land in the Indian territory in the southeastern part of Kansas. But they repudiated all claims to this Kansas domain, asserting that they were not virtual parties to the treaty assigning it to them. In these circumstances, the solution considered by the Secretary, was, the resumption of these Kansas lands by the government and the purchase for the Indians, of the title of the land company to the Tonawanda reservation instead. The only danger to be apprehended was, that the land company would refuse to sell, except at exorbitant prices. However, Messrs. Bryan and Martindale were willing to relieve the Secretary from all trouble in that regard, and to assume the difficulties of the negotiation, which they foresaw would be insurmountable, if the executive department of the government, resuming the ground taken by the former Secretary of the Interior, Mr. Ewing, should decline to expel the Indians by force.

The Secretary recommended that an interview be had with the President the following day. By his procurement, an appointment was made by the President to receive the "Tonawanda delegation" at 12 M., and to confer with them thirty minutes. The delegation got ready. Mr. Martindale, with the co-operation of his assistants, prepared a condensed statement of their case. Shortly before twelve, as they supposed; on the next day; they repaired to the White House.

Being ushered into the executive chamber and introduced to the President, he looked at his watch and admonished them that they were five minutes behind the time appointed. Mr. Follett apologized, and placed the delay to the fault of the clock at Willard's Hotel. Mr. Martindale then said that they appreciated the importance of condensing what they had to present, that they had accordingly put their case in writing, and would proceed to read it, making such explanations, as would enable the President immediately to comprehend it.

"That is right, Mr. Martindale; that is the way such business should be done," replied the President.

The reading proceeded; the President became interested, and when it was concluded, he said:

"Gentlemen, tell me what you want?"

The reply was prompt.

"Either let us alone until we have finished our struggle in the courts, or, take the Kansas lands, and give us the government price in money, and we will buy our place."

The President rejoined:

"Why not, Mr. Commissioner" (addressing General Denver, who was present), "why shouldn't we give them the money and cut this Gordian knot?"

After a little hesitation, the Commissioner answered,

"I don't know why not."

The delegation were very naturally quite jubilant. The thirty minutes were up. They rose to leave.

"No, no," said the President, "you will please remain," and he went to the door and told the usher that he was engaged.

The president entered heartily—warmly—considerately into the case. A stranger to it up to that time, he comprehended it at once, and by his prompt and judicious action, secured a band of seven hundred men, women and children, who had no claims on him except his sense of justice and compassion, in the possession of their ancient homes. Events, since then,

have had their influence on the estimation in which the character of President Buchanan will be considered; but he will be kindly remembered in that band of Tonawandas—to them, he was the "Good" as well as the "Great Father." During the interview, one of the counsel of the Indians, having professional engagements away from Washington, proposed to leave the settlement of details to his associates and the Commissioner of Indian affairs.

"No," interposed the President; "never take a second love until the first one is disposed of."

This was a pertinent and appreciative illustration for a bachelor like the President. He then added very kindly and truthfully:

"You will never have a more important litigation than this."

The President then went through with an estimate of the money necessary, in the case; indicated that a treaty should be had to consummate it, and finally dismissed the delegation with the assurance of success.

Messrs. Bryan and Martindale then went to work with renewed zeal. It was necessary to get propositions from the members of the land company to sell out their prospective title, so as to show that a treaty would be operative. This duty occupied their time and thoughts during the summer. They were so far successful that in the following autumn, a treaty was made between the United States and the government by which the Kansas lands were valued at two hundred and fifty-six thousand dollars, and that sum was placed at the disposal of the Indians to secure their reservation. After protracted delays in the Senate, the treaty was at length ratified in the session of 1859, and the negotiations for the purchase of the claims of the company were actively prosecuted. The President and Secretary of the Interior had determined that the price to be paid should not exceed twenty dollars per acre. Many members of the land company were reluctant to accept that price, and prob-

ably never would have accepted it, but for the attitude taken by the government. Finally, the Indians concluded to reduce their reservation to seventy-five thousand acres, and to secure the investment of the portion of two hundred and fifty-six thousand dollars not used in the purchase of lands, so that annuities might be derived from it. The whole scheme was accordingly consummated during the year 1860, and Mr. Bryan and his associates had the satisfaction of meeting the Tonawandas in council and hearing the exultant and descriptive congratulations of one of the chiefs, as he pronounced the Indian idea of a title in fee simple:

"Now we own our lands from the centre of the earth to the heavens."

The death of Mr. Bryan was a positive loss to the legal profession of the western portion of the State of New York. His age, acquirements and temperament placed him in the front rank of lawyers, while his personal integrity and immovable fidelity to the duties of his professional employment rendered him an invaluable assistant to his clients. Whatever the interests were which were entrusted to him, they were always sure to receive all the faithful, earnest attention they deserved. In fact, the zeal manifested by him in the discharge of his engagements rarely allowed him to stop at that point; for it often induced him to continue and protract his investigation and reflection beyond what was required for the purpose of securing simply a practical conclusion upon the subject which for the time might occupy his attention. He feared to be wrong, and therefore endeavored to fortify his convictions after he had become satisfied that they were right. This perhaps is not an uncommon trait in intelligent, active members of the legal profession, but with him it was of a marked and emphatic nature—so much so as to render him eminently well adapted to care for and protect the important rights that

are necessarily so often committed to the charge of counsel.

While he possessed all the acquirements requisite for the advocate, and all the ability for the clear and forcible presentation of matters of fact, he did not appear in that capacity before a jury without evident indications of diffidence. He did not confidently measure the full extent of the intellectual powers he possessed for the discharge of the duties of the advocate. If he had, the knowledge he never failed to have of his cause, combined with the ease and candor with which his arguments and views were always presented, would have been certain to have secured him very great success in that department of professional practice. This is a failing often found in men of intellect and talent; and it is unfortunate for the public that it is so, for it permits persons of inferior ability to take the positions and enjoy the advantages for which they are too often not qualified, because those who by their acquirements are fitted for them, lack the boldness and assurance necessary to attain them.

Before the court none of this constitutional timidity was manifested. There he always appeared to feel at ease; and for that reason his cases were well presented, the points in them clearly stated, and the arguments properly elaborated. He never failed to see and comprehend all there was of the case he had at the time in hand, and was consequently prepared to enforce his own views and promptly answer those maintained by his opponent.

He was an accomplished, affable, and dignified member of the profession, and his early death has left a vacant space which it will be difficult to supply by any one having so general an adaptation to the discharge of all the duties of the position.

Mr. Bryan took a prominent and important part in political affairs. From his very boyhood, he espoused the principles and advocated the measures of the Democratic party. He believed the principles of

American Democracy were the corner stone of our civil and religious freedom. He was thoroughly conversant with the writings and teachings of those grand old chieftains who were equally an honor to their party and the nation. The works and productions of the fathers of Democracy, Jefferson, Madison, and Monroe, of the illustrious Thomas Hart Benton, of Missouri, of Silas Wright and Martin Van Buren, were as familiar to him as household words. He threw his whole energies into the advocacy of his political principles. He was a most effective campaigner. He was as true as steel, whether fortune frowned or smiled upon the party. Whether the Democratic banner trailed in the dust as in 1840, 1848, 1860, and 1864, or when the Democracy carried the presidential elections in 1844, in 1852, and 1856, he was equally zealous, uncompromising, and reliable in the support of what he regarded as the true principles upon which the government of the country should be administered. His voice was heard trumpet-tongued, cheering on the Democratic hosts at mass meetings in towns and in cities, and the productions of his pen animated the Democratic columns through the newspapers of the party in various portions of the State. He was at the urgent request of his Democratic friends once a candidate for the Assembly, and just before his death, in 1867, he respectfully declined the nomination unanimously tendered him by the Democratic Senatorial Convention for the twenty-ninth district, composed of the Counties of Niagara, Orleans, and Genesee. He was over and over again a delegate to State conventions, several times to national conventions, and in those positions he invariably exhibited ability, tact, and zeal. His manly and effective oratory, matured judgment, ever genial manner and spotless character, combined to make him a power in the Democratic ranks, and he shared in the councils of those who like Horatio Seymour, Dean Richmond, Edwin Crosswell, Heman J. Redfield and Sandford E.

Church, were its acknowledged leaders. Had he not loved honor and principle more than personal aggrandizement or office—had he been a time-server or trimmer, he could, by turning recreant to his political principles, largely have advanced his pecuniary interests, and obtained in addition the so-much-coveted dignities and emoluments of office. But he cared not that Genesee County, and indeed nearly the entire western portion of the State, were politically strongly antagonistic to his party. The guiding star of his life was principle, and neither as a lawyer nor as a politician, nor as a citizen, did he ever swerve from it. Such men give character to a party. Such men attract their fellow men to its standard. Such men make a party strong in the right. Fortunate would it be for both parties and the country if we had more like him.

As a writer, Mr. Bryan was able, vigorous, painstaking, and as occasions demanded and presented themselves, elegant and brilliant. The columns of the principal daily papers in the State as well as the local papers in Genesee and the adjoining counties were through a long series of years enriched by contributions from his pen. How versatile were his gifts. How much of research and investigation his articles exhibited. What an affluence of diction was at his command! What a wealth of language! How he threw his whole soul, as it were into the advancement of all measures and improvements calculated to promote the general welfare. How invaluable he was to the public interests of his section of the State. How often was his charming eloquence heard in the halls of justice, in the lecture room, before county agricultural societies, on patriotic occasions and at public festivities. Now eulogizing the illustrious departed—then again encouraging the living. What a bright, what a hopeful spirit was his. How rare were his conversational powers. How he interested, charmed, instructed. How brilliant were his sallies of wit and humor. How he loved the beautiful in art.

How he attracted one towards him by his unaffected dignity and true manhood. How nobly he strove to make the world better for his existence. He scorned those who crook the pregnant hinges of the knee that thrift may follow fawning. What a host in and of himself: How self-sufficient.

It is not consistent with the limits of this memorial that we should publish Mr. Bryan's speeches in full, or even give extracts from any great portion of them. Many of them were models of eloquence, and classic in their style. He was always up to the requirements of the occasion. Whether before a court, or addressing an enthusiastic political meeting, or lecturing in the presence of select and discriminating audiences on literary subjects, he was equally happy. We cannot refrain from recalling to mind a few prominent illustrations of his oratorical power. When the whole country was in mourning by reason of the fiendish assassination of the patriotic and revered President, Abraham Lincoln, public meetings were everywhere held to give expression to the sense of the people upon the awful national calamity. One was held at Batavia, and Mr. Bryan was invited to deliver the address. Few who heard him on that occasion will forget the effort or the orator. From the plaintive opening of the address with "My sorrowing fellow-citizens," to the impressively eloquent close, he was listened to with the most profound interest and unwearied attention. Mr. Bryan, in a masterly manner, portrayed the enormity of the crime of the assassin. The foul murder of our beloved Chief Magistrate was a blow aimed at the sovereignty of the people, who had chosen him at the ballot-box. It was the darkest day in our history as a nation, when its constitutional head was brutally murdered by the pistol-shot of Booth. The speaker alike charmed and soothed all present by the exceeding appropriateness of his language and the kindness and sincerity of the feeling he exhibited. In discussing the character and public

acts of the martyred President, he displayed so much magnanimity, delicacy and independence of criticism, that he won the admiration and approval of men of all political parties.

Upon the important occasion of laying the corner-stone of the New York State Institution for the Blind at Batavia, on the 6th day of September, 1866, Mr. Bryan was selected as one of the orators. He had been especially active and instrumental in effecting the location of the institution at Batavia; and subsequently he materially promoted the progress of the noble charity. The address is such a fine specimen of condensed eloquence, that we give it entire:

"Fellow-citizens:—You are this day to witness an interesting ceremony. Our great State has decreed that an edifice of her own shall rise upon this fair eminence, consecrated to the instruction and care of the blind. Its name, 'THE NEW YORK STATE INSTITUTION FOR THE BLIND,' declares that it is to be the child of the State, and the faith and honor of the State are pledged to its completion and support. Genesee may be proud that its beautiful county seat was designated as its site, and that her sons presented to the State these ample grounds. One sad recollection only obtrudes. The eminent citizen, who was foremost and largest in his offering to this and so many other beneficent objects, was not spared to rejoice with us to-day.

"We come to add another to the roll of the great charitable institutions of the world. We come in that spirit which is 'thrice blessed,' to lay the foundation of a structure to relieve and soothe the smitten and afflicted—not in the interest of war, or cruelty, or violence, but swayed by the high and advancing civilization of the nineteenth century—for *mercy* 'hath now her victories not less renowned than war.' New York commanded this structure to come forth. May its walls ascend in strength and grace; may it rank with the first and best in any land, and may its career be

long and glorious! Thus hopeful and trusting, let us listen to the voice of prayer and the word of God."

The Honorable George W. Clinton, of Buffalo, in a letter addressed to a member of Mr. Bryan's family, thus beautifully alludes to the literary power and tastes of the subject of this memoir:

"Mr. Bryan's addresses were permeated by that goodness which exalts mediocrity, and without which genius is baleful. He was emphatically an honest man, and worshiped truth and the Author of all Truth in the humble, loving spirit of Christianity. In his literary and historical productions he exhibited nice discrimination of character, a power of meting exact justice and more laborious research than could reasonably have been expected from one having so many demands upon his time. His style was a model of clearness, with all due polish, and was ornate, without excess.

"From what I have seen of his written efforts, they prove that with an undivided devotion to literature he would have become eminent."

Can anything be more chaste and graphic than the following peroration of an address delivered by Mr. B. several years ago, before a county agricultural fair in "old Genesee?"

"The pale denizens of city and village, tiring of life on the pavements, are clamorous for more room, and bits of pasture, and fresher air, and hence purchase and improve farms or lots formerly considered outside of and beyond any financial market, and all proper village limits. The extreme outer lots are now prized as most eligible and valuable. If such is the tendency *now*, how accelerated will be the movement towards the farm—country-ward—when each highway is dotted with the most beautiful of our native shade trees—when the last ugly patch of bushes and weeds has vanished from the fields—and even clumps of forest or woodland are trimmed and cleaned and underbrushed—like so many picnic groves—when far-

mers' gardens and flower plots shall broaden and beautify—and over the farmer's porch the ivy, or woodbine, or honeysuckle shall creep and twine, and fountains shall spout in the farmer's door yard.

"I am not mad, Mr. President, in venturing the prediction that in the perfection of agricultural tillage —in able and artistic management and rotation of crops, in the wealth of orchards and nurseries, and in the number and quality of live stock, 'Old Genesee' —less than a quarter of a century onward, will not be eclipsed by the landscape gardeners of Belgium, or even by the rich and indomitable farmers and cattle breeders of England herself.

"Those will be halcyon days for the true farmers of Genesee—her soil a garden—its tillers noble by nature's own heraldry—her daughters ladies even in their own might and right—and all her sons, industrial or professional, from office and shop and forge—prospered and blessed in the bounty and richness of her agricultural products and the success of a farmer's life.

> "'In ancient times the sacred plow employed
> The kings and awful fathers of mankind,
> And some, with whom compared your insect tribes
> Are but the beings of a summer day,
> Have held the scale of empire, ruled the storm
> Of mighty war, then, with unwearied hand,
> Disdaining little delicacies, seized
> The plow, and greatly independent lived.'"

Perhaps the most classical as well as the most successful of Mr. Bryan's many written literary performances, was the lecture which he pronounced upon Edmund Burke. From the exordium to the close, it fairly sparkled with gems. We quote a few sentences: "The reign of George III. presents some of the most striking features in English history. Stretching through a period of fifty-nine years, it gave to the world a series of public men the most brilliant and extraordinary; and it closed, leaving the British em-

pire in the full march of grandeur and prosperity. In the midst of the conquests and convulsions which desolated Europe, no invader had polluted her soil, no danger had shaken her institutions. The armies of France, led by the greatest captain of the age, had been vanquished—her colonies captured—her fleets driven from the ocean. The eyes of the intelligent and stubborn old king, darkened alike by the infirmities of age and the mists of disease, were closed by the fourth Guelph, in 1820, and his remains borne to the royal vaults at Windsor."

"Industrious to a proverb—frugal to a farthing—irreproachable in private life—versed in the detail of politics beyond any ruler of his day; devoted to the wants of his people—but unflinching in his adherence to prerogative, he outlived all the greater lights which had revolved about his throne. Prominent among the illustrious men of that period stood Edmund Burke." . . . . "I have in my mind the grand form of an American statesman now deceased, whose political opinions I did not fully share, but whose great powers none could more ardently admire, who stands towards this generation like Burke and Bolingbroke towards the last—as a man of *full* mind whose *words* were *thoughts*—and who, with prodigious resources of idea and language, combined like them the marvel and the miracle of speaking and writing well—whose grave and pungent sentences are destined to the reverence of future ages. There are many points of resemblance between the statesman of Marshfield and the statesman of Beaconsfield. . . . . It was the friend of their latter days—the orator, the dramatist, and the minstrel Sheridan—who said of Mr. Burke, 'To whom I look up with homage, whose genius is commensurate to his philanthropy, whose memory will stretch itself beyond the bounds of any little temporary shuffling through the whole range of human knowledge and of honorable aspirations after human good, as large as the system which forms life, as lasting as those objects

which adorn it. A gentleman, whose abilities, happily for the glory of the age in which we live, are not intrusted to the perishable eloquence of the day, but will live to be the admiration of that hour when all of us shall be mute, and most of us forgotten.'"

His appreciation of the writings and style of the illustrious literary men of our day and generation, may be inferred from the following extracts from the lecture which Mr. Bryan delivered before the Batavia Lyceum, on the fourth of January, 1860.

"In the loss of statesmen and orators following each other in the dread path, in rapid succession, the country has mourned its Calhoun and Clay and Webster—a matchless trio—who had become as it were so many powers in the State, self-existent, self-sustaining, and independent of the caprices of political fancy. They expired when their intellects were still in full vigor and their forces still waxing stronger—they all met death with the robes of office about them, and with official duties still undischarged. On the fifth day of September, 1851, at his residence in Cooperstown, near the banks of that beautiful lake and amidst scenery which his pen has so vividly illustrated, yet in the prime of advanced manhood, with faculties unimpaired, and with the strongest assurances of comfort from faith in that religion which he had believed and practiced from infancy — died the great American novelist, James Fennimore Cooper. One of the most brilliant and original of our literary lights was extinguished by the inevitable messenger, and he who had so often depicted with thrilling accuracy the last hours of the soldier and civilian — the flight of the spirit into the unknown world, from camp or wilderness, or war-path amid the tiger strife of battle, was himself introduced into its awful precincts. . . . .

"He founded two new schools of literature, and made them exclusively his own. He was among the first who enabled us, in reply to the question, who reads an American book, to answer — 'the world.' He has

illustrated with matchless energy and beauty, all that is sublime and interesting in the scenery of his country. He has exalted the position of that country among reading and thinking classes of every country. On the Rhine, the Volga, the Ganges, at Ispahan, wherever a book stall can be reached, he is the companion of prince and of peasant, and the fire of his blazing imagery loses but little force in translation. While others imitated in tame mediocrity the leading writers of the old world, he invented a style and subjects of his own. While others copied, he produced originals. While others were content with an approach to the European standard, like a true American, he sought to make a higher standard for himself. Where even the name of Washington is scarcely known, the fame of the great American novelist has extended, and in climes where the speeches of our statesmen are never read, the beauties of Cooper are as household words. . . . .

"Sir:—His works will bloom in perennial beauty when the colors of the painter shall have faded and the arch of the sculptor be broken. The efforts of true genius are immortal and cannot but by annihilating die."

How much thought, how much grandeur of expression, are contained in the above sentences! What a pure, what an ennobling imagination was his! In a lecture upon Oliver Cromwell, Mr. Bryan displayed extraordinary descriptive power, as is exhibited by the following extract:

"Wherever the English language is spoken or the English common law adopted, the name of Chief Justice Hale is a synonym for whatever is sagacious in legal judgment or unpurchasable in judicial integrity. Milton was the Latin or Foreign Secretary of Cromwell, and the fast friend of his administration. That administration he defended in a series of papers of transcendant ability and elegance. He conducted several of its negotiations, and wrote some of its most

finished correspondence. Not even in his Paradise Lost does he stand upon a pedestal of higher or more unapproachable excellence than in those voluminous essays in defense of civil and religious liberty and the freedom of the press. His stately pen, that never, never for a moment laid aside its costly lore or its austere majesty, was frequently employed by the Parliament to answer and to silence the attacks of its unrelenting and accomplished opponents. The best and finest parts of each contending faction seemed to be embodied in his life and opinions. Now, and centuries hence, his name will never be mentioned by the scholar or the student without emotions of the most wonderful admiration and the most profound reverence. Before his brilliant fancy were unveiled spirits too bright for earth. Angels clad in celestial armor and the sapphire fount; the crystal walls; brooks that rolled on orient pearl; Hesperian fruit; flowers worthy of Paradise; stones of costliest emblem. To his ear intent were wafted the chorus of the cherubim and the sounds of their golden harps."

Mr. Bryan was married on the 24th of February, 1848, to Miss Ruth Beardsley, daughter of Dr. Theodore Beardsley, of York, Livingston County. This union was of unalloyed happiness, and their home at Batavia has ever been the seat of refinement and hospitality. Mrs. Bryan, who survives her beloved partner in life, is a lady whose accomplishments and attainments, as illustrated for upwards of twenty years, have won for the educational institution of which she is principal, a reputation second to none in the State. One child only, a daughter of seventeen, survives her father. One brother, Mr. George J. Bryan, now and for many years editorially connected with the daily press of Buffalo, and Mr. Bryan's father, are all that the ravages of time have spared of a family of eight persons.

But this honorable and useful career was soon to close. On the 25th day of October, 1867, at Burling-

ton, Iowa, near a thousand miles away from his home —far away from his devoted and sorrow-stricken wife and beloved daughter—far away from the scene of his labors and triumphs in life's battle—far away, too, from the hills and valleys of old Genesee—despite the untiring and heroic efforts to avert his inevitable fate, which were put forth by those who cared for him, and watched his last moments, William G. Bryan's spirit ascended to the God who gave it.

It appears that Mr. Bryan, then on a visit to Mr. and Mrs. Carper, at Burlington, Iowa, was taking a ride in a buggy with Mrs. Carper, and when in the vicinity of Olmstead's Mills, near that city, they halted for a passing train of cars. On starting up the horse, Mr. Bryan accidently dropped one of the lines, and was in the act of reaching over the dash to recover it, when the animal made a sudden start, throwing Mr. Bryan with great violence across the buggy, striking the back of his neck on the wheel; he still clutching the line, the horse was drawn round, upsetting the vehicle and throwing them both out. Those who witnessed the accident state that the first fall was the fatal one, as he was evidently insensible after that. The physicians are of the opinion that the spinal cord was so injured as to paralyze the brain, causing immediate insensibility, from which he never recovered.

The feeling of regret inspired by his untimely decease was universal. It was not confined to formal notices from courts, nor to eulogies from his professional brethren, who felt that one eminent in their ranks had fallen. The merchant in his counting house, the mechanic in his shop, the laborer leaning over his hod, and the sturdy yeomanry in their quiet homes, heard the announcement with heartfelt sorrow. A committee, exceptionally large in numbers, composed of the representative men of Genesee County, proceeded to Buffalo, where they met the remains of their late beloved friend and escorted them to that home at Batavia, which but a few days before he had

left in the full vigor of his noble faculties. Too full for utterance were the hearts of those friends of his boyhood and of his maturer years, as they marched silently and respectfully behind the now inanimate form of one, who when living, was so near and dear to them.

The honors paid to the memory of Mr. Bryan were of the most impressive character. The members of the bar of Genesee County, the citizens of Batavia, without distinction of party, and vestry of St. James' (Episcopal) Church of Batavia, in which Mr. Bryan was an honored associate met in due time, and gave expression in touching and appropriate language to their profound sense of the great and almost irreparable loss, not only to Genesee County, but the State had sustained. Many daily and weekly papers in western New York contained glowing and heartfelt eulogies of deceased. *The Batavia Spirit of the Times* came out with all the inside columns draped in mourning, a tribute, so far as our knowledge extends, never before paid to a private citizen.

The funeral of Mr. Bryan took place on Thursday, October 31, 1867. The services were held at St. James' (Episcopal) Church, and a very large concourse of the inhabitants of Batavia and vicinity, as well as from the neighboring cities and villages, assembled to pay the last tribute of respect to the honored dead. The merchants closed their stores, and business generally was suspended in town. The services were conducted by the Rev. M. Fowler, the Pastor of the Church, and were listened to with the most profound attention. The remains were then conveyed to the cemetery; being followed to their final resting place by a long line of mourning friends. Never was more heartfelt sorrow more unaffectedly and impressively demonstrated.

Such accumulated testimonials of respect encourage us. They assure us that the popular heart is sound to the core. They convince us that true worth

and character and real ability are appreciated, even in days when there is so much counterfeit, so much pretension, so much of the unreal. We cannot but deeply deplore the loss of one who led so blameless a life, and accomplished so much in comparatively a short time. What a brilliant future was in store for him! Verily, there is a "Divinity that shapes our ends, rough hew them as we will." In his almost tragically sudden demise, we are again impressed with the truth and sublimity of that ever memorable utterance of one of Britain's noblest orators (and one which Mr. Bryan. dearly loved to quote), "What shadows we are, and what shadows we pursue!"

JAMES MULLETT.

Birthplace.—Poverty of his Parents.—Apprenticed to a Carpenter and Wheelwright.—Anecdote.—Frames a Bulding on a New Theory.—Success.—Scene at the Raising.—Becomes a Clerk in a Store.—Anecdote.—Tries a Lawsuit.—His Success.—Commences the Study of Law.—Judge Houghton.—Admission to the Bar.—His Professional Career.—Eminent for his Eloquence.—Politics.—Elected to the Assembly.—Distinguished in that Body.—Appointed District-Attorney.—Declines a Re-appointment.—Great Defense of Damon.—Defense ot the Indian Woman.—Touching Incident.—Other Trials.—The Chautauque Bar.—His Personal Appearance.—Removes to Buffalo—Professional Success.—Elected a Justice of the Supreme Court.—Death.—Character as a Lawyer.

WITH the Constitution of 1846, a new judiciary system was adopted, which provided for the election of justices of the Supreme Court and judges of the Court of Appeals by the people. So far as the courts and the judiciary were concerned, old things passed away, and all things became new. Like all innovations in government, these changes were looked upon with distrust by some, and with alarm by others. But as the American people submit to the laws with a sort of instinct, all prepared to test the provisions of the new Constitution, without a murmur. Early in June, 1847, an election was held for choice of judicial officers for the eight judicial districts, into which the State had been divided.

Among the judges chosen at that election was James Mullett, then a resident of Buffalo, New York, for many years a distinguished member of the Chautauque bar, residing at Fredonia. There, a poor and unfriended boy, he became the artificer of his own

fortunes, and by industry, economy, studious habits and self-cultivation, arose to eminence and distinction in a profession crowded with ambitious aspirants for preferment.

Like very many who have occupied a distinguished position at the bar of the State, Mr. Mullett was a native of Vermont. He was born at Whittingham, in that State, October 17th, 1784. He was the eldest of thirteen children. His father was, by occupation, a tailor—a man possessing a bright, active mind and considerable information, but entirely wanting in the means to liberally educate his children; and James, who inherited all of his father's intelligence, with the addition of much enterprise and great love of knowledge, was compelled to struggle with adversity for the information which he obtained. Almost with the beginning of the present century, the father of young Mullett removed from Vermont to Darien, in the County of Genesee, New York.

As soon as James was old enough to labor, he was apprenticed to a joiner and millwright. His natural ingenuity soon began to exhibit itself in his new calling. The progress which he made is described by one of his biographers, in the following anecdote:

"His *boss*, who was about constructing a saw-mill by the slow process known as the scribe rule, commenced fitting each tenon to its appropriate mortise, and by cutting and trying after the style of those days, proposed in time to complete the mill. James saw the disadvantages and necessary delays of this style of mechanics, and proposed himself to lay out and put up the frame by a rule which he supposed more expeditious and quite as correct. He did it; and as the day for raising was appointed, the neighbors came in to assist, and witness his success, or, what was more probable, his failure. But, instead of a failure, it was a perfect triumph. Not a mortise or joint was wrong—not a brace, or sill, or girt, or rafter was missing, but, fitting in every part, it stood as the

witness of his mechanical genius; and so great was the gratification of the people present, that they took him up and carried him about in triumph upon their shoulders."

It was this early-developed mechanical genius, which, in after life, rendered him so successful in trying those cases where mechanical principles were involved. As a proof of this, it is related that on one occasion Mr. Mullett was retained in an action brought against a millwright in Cattaraugus County, to recover heavy damages for not erecting a mill in a skillful and workmanlike manner. The defendant prepared a strong and ingenious defense, in which he attempted to show that the plaintiff did not understand the operation of two large wheels which he had made. This defense was based entirely on principles of mechanics. It was devised and planned by one of the most skillful wheelwrights in the country; and, as the errors of the theory, if any, could be detected only by a competent workman, the defendant was sure of success; for, although he was well aware of Mr. Mullett's great ability as a lawyer, he did not dream that he was skilled in the art and mystery of building wheels. But when Mullett came to the cross-examination of the witnesses, all in the court-room were astonished at his knowledge and skill as a mechanic. The master-builder, who had planned the defense, on his cross-examination, was caught in the meshes of that "thumbscrew of the law," and completely failed in attempting to sustain his idea of the case. There was not a principle in quantity, measure, motion, balance, and relative position, that Mullett did not understand, so that the practiced mechanics, who came to testify against the plaintiff, found in the lawyer opposed to them a mechanic vastly superior to themselves. It is proper to add, that the plaintiff recovered a verdict for his claim against the defendant.

Mr. Mullett continued with his employer two years, working diligently, and acquiring a knowledge of the

business quite beyond his years. While thus engaged, he made the acquaintance of a Mr. Lovejoy, of the firm of Lovejoy & Hale, a respectable mercantile firm at Fredonia, New York. Mr. Lovejoy soon ascertained the many excellent qualifications of young Mullett. To his surprise, he learned that he was an excellent accountant; and, being in want of a clerk, invited the young man to enter his store in that capacity. The invitation was accepted, and in August, 1810, he became a clerk for Lovejoy & Hale, and a resident of Fredonia. While thus engaged, his employers brought an action against a man for necessaries furnished his son, an infant under the age of twenty-one years, to wit, of the age of nineteen years; to use the language of legal forms. The claim was resisted, on the ground that they were delivered to an infant. On the day of trial, the plaintiffs' attorney disappointed them; and when the cause was called, the defendant appeared with a practiced and skillful lawyer; but the plaintiffs had no counsel. What was to be done? At the moment when they were on the point of withdrawing their suit, young Mullett entered the office, and, to their surprise, proposed to try the case for them. Mr. Hale took him into an unoccupied room; when they were alone, he said:

"Why, James, do you know anything at all about law?"

"Yes, something," was the reply.

"When did you have an opportunity to learn law?"

"When other people were amusing themselves, or were in bed and asleep, I read several law books," said Mullett.

"Can you try this suit against that lawyer? he's very abusive sometimes to the opposite lawyer," said Hale.

"I'll take care of that. Come, it's time to proceed. Shall I attempt to try the suit for you or not?" said James.

"Go ahead and do your best," was the reply.

Accordingly, they returned to the court room. A jury had been impanneled, and all things were ready to proceed.

"Who tries this cause for the plaintiffs?" asked the defendant's lawyer.

"I do," said Mullett, coming forward and seating himself at the table.

"What, are you going to try it? Where is your mallet and chisels? or are we to be hacked with broadaxes here by this fellow?" asked the lawyer in a sneering manner.

"No, sir; I shall hack you with something which you know less of than you do broadaxes and chisels," was the reply.

"And pray, Mr. Thingum, what is that?" asked the lawyer.

"Good, plain, common sense," said James.

The roar of laughter which followed this keen reply, showed how well the cut was enjoyed by the audience; while the lawyer bit his lips.

The trial proceeded. Mr. Mullett proved the delivery of the articles—that they were delivered to the son of the defendant—their value—the condition of the defendant as to property, and that the son was under twenty-one years of age, with the precision and skill of an old lawyer. The attorney opposed, used every means in his power to embarrass the young man. Every captious objection which he could conjecture was used, but in vain; the head that could plan with so much skill and success, a new method of erecting the frame of a building, had resources sufficient to manage this cause. When the evidence was closed, the defendant's counsel insisted upon "summing up" the case, believing of course, that he would have an immense advantage over his "green antagonist" in that part of the contest.

"Don't have it summed up if you can help it," said Hale; "he'll beat you at that."

"Let us submit the case without summing up," said Mullett.

"No, sir; I shall sum it up, and you can do as you like," said the lawyer.

"Very well," said Mullett; "so I suppose you must commence."

When the counsel had concluded what he believed to be an overwhelming speech, the young clerk proceeded to address the jury, and, though his argument was not entirely according to forensic rules, it was strong, able, and characterized by common sense, and fortified sufficiently by law to render it conclusive. All in the room listened with astonishment at his ready flow of language, and if his friends were delighted with the consummate skill in which he framed the saw-mill, their delight was increased, when they listened to his first forensic effort, while the lawyer opposed, found that he had come in contact with no common mind. The jury returned a verdict for the plaintiffs.

This incident determined the future career of James Mullett, and paved the way for his entrance into that profession which he so signally adorned. He was now strongly urged by his friends to adopt the legal profession; and he acceded to their wishes. But prevented by "chill penury" from availing himself of those means of obtaining a legal education, which more fortunate young men possessed, he continued his clerkship with Lovejoy & Hale, devoting every leisure moment to his legal studies. When the business of the day was over, and upon occasions when others were "seizing fancied pleasures as they flew," he wrestled with, and mastered those elemental principles, which laid the foundation of his excellent legal education. After continuing his studies in this manner several months, he entered the office of the late Jacob Houghton, of Fredonia, as a student at law. Mr. Houghton was one of the most respectable and able members of the Chautauque bar, a judge of unblemished purity, and a citizen whose excellent qualities rendered him a valuable member of society.

Elijah Risely, Esq., was also a student in the office of Judge Houghton, with Mr. Mullett.

Like many other young men of limited means, Mr. Mullett was compelled to support himself, during his studentship, by teaching.

The benefits which are derived from a few years' experience as a teacher, are of great value to a young man preparing for any profession, especially that of the law. It gives the mind a peculiar discipline — the great art of self-government, and the government of others, is thus learned. But it requires a peculiar energy of thought and expression. The teacher should look with reverence upon every human soul committed to his care; and as Canova or Fiesole saw in the unhewn marble, the majesty, grace, beauty, and emotion which commands the admiration of ages, so the teacher should see in the undeveloped mind of his pupils, the great, the gifted, the good of coming years, and thus labor to quicken the young mind to a consciousness of its inward lofty nature, its capacity for progress, its affinity for all that is beautiful and elevated. With these views, who can be surprised, that so many statesmen, jurists, divines, and gifted men in all the avocations of life have once been teachers?

Mr. Mullett felt the responsibilities and appreciated the benefits of his position as a teacher, and amid the active scenes of his life, reaped the reward of duties well done in that profession.

Thus, dividing his time between the school-room and his legal studies, occasionally conducting suits before the justices of the peace in the vicinity, he was at length qualified for his admission to the Chautauque Common Pleas, and he was admitted to that court on the 2nd day of November, 1814. From that time he abandoned the school-room and devoted his attention to his profession. His practice was confined to the business of that court for two years, when, in June, 1816, he was admitted to the Supreme Court; and in due time he was admitted a solicitor in chancery and

a counselor of the Supreme Court and in chancery. After his admission to the bar, his struggle with poverty ended. He entered laboriously into the practice of his profession, and it brought the sure reward of industry and ability. At first, the older members of the profession occupied the circle to which his ambition aimed, but he rapidly approached that position, where he was accorded the honors so long reaped by others.

At the period when he was called to the bar, political excitement in the State ran high. The war with England had closed. Amid the rejoicings which followed the victory of New Orleans, Daniel D. Tompkins, by the pleasing and attractive features of his character, his elegant address, his energy in aiding the government in the prosecution of the war, rendered himself the favorite of the people, and in 1816, he was elected, for the fourth time, Governor of the State. Then came the singular political era, which followed the accession of De Witt Clinton to the gubernatorial chair of the State—the fierce partizan contest of the Clintonians and Bucktails. In this contest James Mullett engaged with all the energy of his active mind. His great friendship for Mr. Tompkins caused him to conceive a dislike to Governor Clinton, and he became an active, prominent member of the Bucktail party in the County of Chautauque. With his pen, with his eloquence in the popular assembly and everywhere, he encouraged, enlivened and led on the Bucktail partizans, and that party soon became dominant in his county.

For several years Mr. Mullett was a law partner of the late John Crane, of Fredonia. This relation continued until the autumn of 1822, when the former was nominated by the Bucktail party of Chautauque County for member of Assembly. After a closely contested election, Mr. Mullett succeeded. That year the contest for governor, between Joseph C. Yates and Solomon Southwick occurred, in which Judge Yates

was elected. Mr. Mullett entered the Legislature January, 1823. He at once became one of the leaders of his party in the Assembly. Peter R. Livingston, of Duchess County, was elected speaker. He was one of the most bitter opponents of the Clintonians in the State, and the strong vote by which he was elected exhibited his great power.

Mr. Clinton's course in the Constitutional Convention of 1821 rendered him, for the time being, unpopular. Indeed, as it then appeared, his enemies had completely triumphed, and his political career ended. But whatever his opponents expected from the result of this election, they were destined to disappointment. Like the first Napoleon's return from Elbe, after disasters which appeared overwhelming, so Mr. Clinton emerged from this defeat to a brighter position than he had ever occupied before the people of the State of New York.

The ability of Mr. Mullett as a legislator is fully evinced by his position upon several important committees, by the speeches which he delivered, and the important documents which still survive him.

He was a harsh, bitter, and uncompromising opponent, often pushing his political prejudices to extremities; but as that course was in strict accordance with party discipline, he could hardly fail to pursue "the regulation."

In doing so, he did not escape the denunciation of his political opponents, who often charged him with all the political evils and enormities of which man is capable.

As has been well said by another, "To be a member of the Assembly, and a leading member, at a time when men were elected in reference to their qualifications and capacity, was a distinction very much to be desired."

During the session of this Legislature, an attempt was made to procure the passage of a law authorizing the election of presidential electors by the people, in-

stead of their appointment by the Legislature. It was a measure very popular with the people, and they were clamorous for the passage of such a law. In the House a committee of nine was appointed, with Mr. Flagg as chairman, to report a bill favorable to the wishes of the people on the electoral question. Mr. Mullett was a member of that committee. After much discussion, a bill was reported, "giving the power of choosing electors to the people, but requiring that the persons elected should have a majority of all the votes." An attempt was made to alter this bill, so that a plurality of votes should elect. This failed, and the bill passed the House as reported by the committee.

This was the year when the great presidential contest between Adams, Clay, Crawford, and Jackson occurred. As neither party could elect, it was charged that the committee desired to do only enough to satisfy the demands of the people, and silence their clamor without effecting the object desired. It was claimed by the opponents of Mr. Mullett, that he sympathized in this feeling, and he shared the censure of the people with all those who supported the bill as it passed. His friends have found sufficient apology for this act, by urging the fact that the measure was a political manœuvre, sprung for effect at a time when the change was not demanded, only to advance the interest of one of the presidential candidates, to the prejudice of the others. At any rate, he voted in accordance with the dictates of his own conscience, regardless of other considerations; in that, he discharged the highest duties of a legislator.

Silas Wright was then in the Senate, where the electoral question was discussed amid all the heat of partizan strife. His vote in the Senate was very similar to that of Mr. Mullett, in the House.

The latter, after serving two terms in the Legislature, retired to private life, and never again held a public office, until, at the judicial election in 1847,

he was elected a justice of the Supreme Court for the eighth judicial district of the State.

He was not constituted for a politician; he did not possess that flexibility of mind which enables a man to pander with success to bar-room politicians, village wire-pullers, managers of caucuses, and conventions, who are the engineers of our political machinery—the running-gears of parties. Plain, direct, honest, and sincere, he could move with power and impressive force in the debate—in the committee—and in the arena of eloquent argumentation. But in the field where political legerdemain is the order of the day, he was out of his sphere—and weak. Returning from his legislative life, to the bar, he rose to an eminence in his profession which soon placed him in its front rank.

While Mr. Mullett was regarded as learned in elemental law, familiar with the statutes, and with precedent, he particularly excelled as an advocate. Perhaps few men who have been at the bar in this State, were more accomplished as jury lawyers than he. He possessed a peculiar force which rendered him an attactive speaker. The manner in which he entered into his client's case impressed both court and jury with the belief in his sincerity; while he had a vigorous, discursive imagination, and a mastery of language which few possessed. It was his fortune to be engaged in many of the great trials which occurred in western New York, during the period of his practice. His defense of Joseph Damon, tried for the murder of his wife, at Mayville, in September, 1834, was remarkable for the ingenuity and ability with which he turned the circumstances relied on by the prosecution for a conviction, into facts, establishing, as he contended, the prisoner's innocence. His address to the jury, in that case, attested that high order of intellect, that unwearied research, that unsurpassed eloquence, which placed it on an equality with the ablest forensic effort

ever made in the State. He interposed the unpopular defense of insanity for the prisoner. As has been well said by an able commentator on medical jurisprudence: "One reason of the reluctance with which courts of law entertain the plea of insanity in a criminal prosecution, is undoubtedly some apprehension lest it should prove to be feigned. And yet it is a disease which is not easily feigned. For all the different forms of insanity have their own peculiar characteristics, which are known and easily recognized by the experienced observer."

Still it is sometimes counterfeited when the physician is not well skilled in the symptoms of "a mind diseased."

Dr. Chayne gives an account of a person who could not only counterfeit insanity, but death itself, better than Falstaff. So successful was this person in his deception, that one day, he actually convinced, not only the doctor himself, but several other physicians that he was actually dead; animation was so completely suspended, that, after feeling his pulse and holding a mirror to his mouth, they were on the point of leaving him to the undertaker, when one of the number discovered returning life.

The most singular case was that of William Newman, who, in 1814, was confined in jail at New Brunswick, for murder. He admirably counterfeited a quick consumption, through all its stages of raising blood, and progressive debility, deceiving all the doctors in the neighborhood. He was thrown into jail on the second of August, but it was not until the twenty-second of September, that his dissolution was threatened. The jailor entered his cell—found him dying—already cold to his knees. The dying man begged for a hot brick to warm them, and while his keeper went out to get one for him, he leaped out of bed, escaped from prison and eluded the vigilance of his pursuers. These, however, are extreme cases. The experienced observer is seldom deceived.

The plea of insanity is, therefore, a humane defense, having a just regard for all the imperfections of our nature. The slight tenure by which we hold our reason, the ease with which our intellect is unbalanced, the fact that all our nicely-arranged faculties may be in perfect harmony and order save one—admonish us to look carefully at the defense—to listen to it with patience and judgment.

In the defense of Damon, Mr. Mullett showed deep research into the phenomena of the mind—all its remote and divergent aspects—all those mental diseases which glide into various degrees of cerebral disorganization or total insanity.

The mother of Damon appeared in court and testified to his insanity. Mr. Mullett's reference to this witness is peculiarly touching and beautiful.

"There is," said he, "one witness whose venerable appearance and sacred character sheds a hallowed influence over everything she says, which demands my implicit belief and reverential faith. I mean the aged mother of the prisoner."

He then relates her testimony, which discloses her reasons for believing her son insane.

"Now, gentlemen," he continued, "whatever you may say in regard to this testimony, I dare not disbelieve it. I revere the sacred source from whence it comes, and I trust, with the most implicit faith, in the nice observation, untiring anxiety and sleepless watchfulness of a mother's love. It is prompted by nature's strongest affections—affections which outlive selfish considerations, endure through all changes of circumstances, and die only with the last throb of expiring nature. . . . . Can the mother be mistaken in the changes of her son's countenance—that object which she had watched from the first dimpling smile in the cradle, through all the varied changes of infancy, youth and manhood, till every well-known lineament became a subject of hope or

fear, and every change was reflected back in the sunshine glow of joy or the cloudy aspect of sorrow?"

Damon was convicted and executed, but the effort of his counsel to save him was a masterly forensic effort, and shed upon him the highest honor. Mr. Mullett was most ably assisted on this trial by the late Judge Houghton, of Chautauque County.

In October, 1833, a criminal trial of great interest took place at Ellicottville, New York. It was the celebrated case of On-oid-ah, the Indian woman, who had been indicted for the murder of a child. Mr. Mullett appeared for the defense. The prosecution was conducted by Anson Gibbs, then District-Attorney of Cattaraugus County, assisted by the late George P. Barker, of Buffalo. There have been but few cases tried in the rural districts which created the excitement and interest that attended this one. Mr. Mullett had been early informed that Barker had been retained to conduct the case against him, and prepared to meet that able and successful advocate, fully aware that he was a foeman worthy of his steel. George P. Barker, as appears in another part of this work, was no ordinary advocate. Perhaps there were very few who possessed so much of that subtle, persuasive eloquence before a jury which he did. The collision of two such minds could not fail to elicit the deepest interest. It seemed, as the trial progressed, that the strength and power of their intellects increased. Sharp and closely contested as was this trial, the distinguished lawyers were governed by the most perfect courtesy. Like two well-skilled swordsmen, who disdained any resort to a thrust or a parry which was not acknowledged by the rules of the combat, so these able contestants resorted to no warfare except that which is permitted by strict legal principles and rules.

When the evidence was closed, Mr. Mullett addressed the jury for the prisoner. He occupied their

attention four hours, and, as was said by a spectator, "it hardly seemed as though he had been talking one hour when he closed," such was the powerful hold which he gained over the minds of all present. There were several circumstances which intensified the interest of the case. The woman was the wife of a chief. She was intelligent, and comely in her appearance. When she was incarcerated she had a babe two months of age, which she idolized. As it was a healthy child, the sheriff was not disposed to have it in the jail, but, overcome by the frantic appeals of the mother, he permitted her to retain the infant; but such was her grief and sorrow at her situation, that within a short time the course of nature was changed —her milk dried up, and she was compelled at last to part with her child.

During the last night she was permitted to have the little innocent with her, she lay with it pressed to her heart, occasionally attempting to give it that nurture which no longer flowed from her breast. When morning came, it was taken from her and given to a sister who happened to be so situated that she could furnish the child with its needed sustenance. The grief of the poor woman on parting with her child knew no bounds.

The manner in which Mr. Mullett seized upon these circumstances was indescribably beautiful and thrilling. Such was his almost magnetic influence over the jury—over all who heard him — that when Barker followed for the people, in the rich strains of his legal oratory, he was in the position of Richard Henry Lee, when he followed one of the masterly speeches of Patrick Henry. It was some time before he could gain the attention of the jury. The spirit which Mullett had invoked could not be easily exorcised. It had permeated every avenue of sympathy—of thought. His powerful, electrical appeal still rang in their ears, and closed them to every other voice, and "not guilty! not guilty!! not guilty!!!" hung quivering on their

lips. Though Mr. Barker's speech was one of the most unequivocal productions of a powerful and accomplished mind and caused the jurors to listen, nay, it engaged their attention, it did but hold the feelings which Mullett's address had aroused, in abeyance, only to leap forth again in the jury-room—to culminate in a verdict of "not guilty."

His powerful but unsuccessful defense in the great case of Saterlie *v.* Windsor, in which he was opposed by the late Governor Young, was another of the many cases in which his eloquence seemed to bear him even beyond himself.

There was no effort at oratory in his speeches, no apparent grasping after effect, no rhetorical flourishes, all was simple—all was tuned to the voice of nature—almost insensibly his language gained the heart. It was like the stone in the ring of Pyrrhus, "which had the figure of Apollo and the nine muses in the veins of it, produced by the spontaneous hand of nature, with no help from art."

Mr. Mullett continued to practice at Fredonia, until 1841, when he removed to the City of Buffalo. His success in that city was a matter of certainty. He had often met the distinguished members of its bar in the forum, and he was warmly welcomed by them to the Queen City, as one whose intellectual superiority would be to them an acquisition of no small importance; such is the generosity of lawyers towards each other.

One of the prominent cases in which he was engaged, soon after his removal to Buffalo, was that of the Ogden Company against Oliver Lee, to recover the value of a large quantity of lumber purchased by the defendant of the Seneca Indians, upon the Cattaraugus reservation. The plaintiff claimed to recover by a presumptive right, purchased of Massachusetts. A large number of actions had been brought, and this case was to determine all. A verdict was found for the plaintiff. It was removed to the Supreme Court,

and in 1844, argued before that tribunal. Mr. Mullett appeared for the plaintiff, and Mr. Fillmore for the defendant. It was one of those questions for which the clear, sagacious, methodical mind of Mr. Fillmore was peculiarly adapted; and his argument was one of great power and ability. In the language of another, "Mr. Mullett addressed the court in an argument of great length, and concluded with an apology for the time he had exhausted. Greene C. Bronson was the Chief Justice of the old Supreme Court. He was a judge of extensive and profound legal learning, thoroughly imbued with the doctrines of metaphysical and ethical science, and gifted with an extraordinary power of application, which rendered a life of severe and unremitting labor entirely natural to him. A close and philosophic argument was his delight, during which he took 'no note of time.'"

Judge Bronson listened to Mr. Mullett's apology, and then remarked:

"That the court needed the argument that had been made, and no apology was necessary."

Mr. Mullett was one of those lawyers who bitterly disliked the Code of Procedure. After his elevation to the Bench of the Supreme Court, he frequently displayed his disgust for it. While presiding at the Wyoming circuit, in 1849, a question as to the interpretation of a section of the Code arose. It was argued at some length by the respective counsel; when they had concluded, Judge Mullett addressed the Crier, as follows:

"Crier, you are a man of ordinary understanding, and within the meaning of the Code, you are a proper person to decide this question. Will you decide it, sir?"

As that functionary declined, Judge Mullett decided the question himself.

In May, 1847, he was nominated for one of the justices of the Supreme Court for the eighth judicial district; he was of course elected by a large majority.

By varied experience at the bar, as the prosecuting

attorney for Chautauque County—as a criminal lawyer, on the defense, and as civil lawyer, he was eminently qualified for the high judicial position to which he had been elected.

As a lawyer, "it was strictly true of Mr. Mullett, that he was entirely incapable of making a powerful effort in support or defense of a case in which he had no confidence; and no amount of preparation or consideration could draw him out in his full proportions, exhibiting his wonderful powers when there was an evident absence of merit. His head and heart kept close companionship, and, although he might misjudge, or be betrayed by the relation of clients, he was always an unwilling, and sometimes a weak counsel, in a bad cause, and he has been known to throw up the papers of a client, and indignantly walk out of the court-room in the midst of a trial, when he had been made the subject of imposition." A distinguished member of the Chautauque bar, in a lecture before the Historical Society of Fredonia, thus describes the appearance of Mr. Mullett, when he first met him in the court-room, in June, 1838. "I took my seat in the bar; the members of the Chautauque bar were principally strangers to me. There was the bland and venerable Hazeltine, the accomplished and confident Marvin, the sharp and accurate Tucker, the amiable and industrious Brown, the honorable and affable Lewis, and at the further end of the bar, and near the prisoner's box, sat Mr. Mullett. I assigned them all their proper positions, and him with the rest. With a *physique*, which certainly would not recommend him, made ugly by an eye which an accident had bleared; I concluded that he was a *specile gratia* member, and was there to represent a country certiorari, or to defend some petty thief. He soon took his seat as counsel for the plaintiff in the first cause called. His client was a poor man, and had lost his buildings by the fire kindled by his rich neighbor, on his fallow ground; and the suit was

brought to recover the damages he had sustained; it was an aggravated case, and had not proceeded far, before I concluded I had misjudged the plaintiff's lawyer, and I inquired who he was. At length the evidence was closed; it was one of those cases which justified the severest stricture upon, and denunciation of, the conduct of the defendant, who had resisted the payment of damages, because his opponent was a poor man. Mr. Mullett saw his opportunity to do a poor man, and at the same time a rich man justice, and he did so in terms that were terribly severe, and in the most scathing language, he denounced and swept away those distinctions which property creates. It was such efforts as this, that distinguished him as the poor man's lawyer."

In the year 1846, he was appointed Attorney for the City of Buffalo, and he held that office until he was elected a justice of the Supreme Court of the State.

Judge Mullett possessed many generous, amiable, and high-toned elements of character, which threw his faults into the shade. His honesty was unimpeachable, and his word might, upon any subject, be relied upon as an absolute conclusion.

With the poets and orators of ancient and modern times he was equally familiar. With the philosophy as well as detail of history, with the current literature of the day, he was familiar, while in all that pertained to the learning of his profession, he had few equals. His memory of leading adjudicated cases was remarkable. At the bar or on the bench, his facility of reference to these cases rendered him ready and strong. As a judge, he was acute, sagacious and reflecting. Even during the hurry and excitement of the circuit, his active mind and his extensive knowledge of the law, enabled him to dispose, with great accuracy, of a vast amount of business. His faults as a judge arose from his having so long been the active advocate, that even while hearing a cause as a judge on

the bench, he could not always divest himself of the spirit which pervaded the contest of the forum. With the light of long experience, with an almost intuitive sagacity, he soon discovered the right and the wrong of a case; and he had little patience with the efforts of counsel on the side which he knew to be in the wrong. Hence he was sometimes charged with prejudging a case.

He usually, in his charge to the jury, divested a case "of those artificial incumbrances and entanglements, the creation of artful counsel, and presented the points in that clear and distinct manner which all jurors could understand, leaning always strongly to the equities of the case, *What is right?* This was his polar star; and with his eye ever upon it, he rendered many judicial decisions which remain to-day as the law of the land, and the written evidence of his abiding integrity."

His opinions exhibit great research, are written with care and perspicuity, always approaching the point on which the case turned, with a directness and celerity which rendered it apparent even to a casual reader.

Early in the year 1858 his health began to give way before the weight of years and the long labors of his professional and judicial life. For a while his strong physical powers struggled with approaching disease, sometimes sending a ray of hope to his anxious friends; but as the autumn approached, it became apparent that his long life was rapidly drawing to a close. He sought that comfort which is from above, that peace of mind which passeth understanding, which robs death of its sting and the grave of its victory. He lingered until the 10th day of September, 1858, and then passed forever from earth's troubled scenes.

HENRY K. SMITH.

General Characteristics.—Born on the Island of Santa Cruz.—Rank of his Father.—Painful Accident to Him.—His Mother, Her High Intellectual Qualities.—Her Influence over Henry.—He Leaves Home.—His Father's Advice.—Laconic Reply.—Placed under the Care of Dr. Berry, at Baltimore.—Progress in his Studies.—His Mental Powers.—Engages as a Clerk in a Dry Goods House in the City of New York.—Singular Circumstance which caused him to Leave his Employers.—Listens to a Trial in which Daniel Cady and Ogden Hoffman are Opposed.—Decides to be a Lawyer.—Seeks Mr. Cady, at Johnstown.—Character of Mr. Cady.—Smith Enters his Office.—Marcus T. Reynolds.—The Debating Club.—Smith Admitted to Practice.—A Delegate to the Young Men's Democratic Convention.—Makes the Acquaintance of Silas Wright in a Singular Manner.—Smith's Speech in the Convention.—Meets with Israel T. Hatch, who Invites him to Buffalo.—Invitation Accepted.—Commences his Practice in that City.—His Success.—His Partnership.—His Capacity as a Lawyer.—Incident in a Trial.—Appointed District-Attorney.—Recorder of Buffalo.—Mayor.—Incident While Mayor.—Smith as a Politician.—His First Marriage.—Loses his Wife.—Second Marriage.—Loses his Second Wife.—Effect on his Mind.—Sickness.—Death.

THE life of Henry K. Smith demonstrates the truth of the old poet's creed, that the mind of man is his true kingdom, in which he can adopt the imperious language of Louis XVI., "the state is myself." As a lawyer, he was imbued with the spirit of legal science, instinctively perceiving and observing all its limitations, its harmonies, its modulations, and discords, just as a cultivated musician can perceive, without an effort, what is congruous or incongruous in the harmony of sound. He possessed much ability for legal disquisition and polemics. His legal speeches and arguments manifest the distinction between a lawyer possessing a philosophic mind, enlarged by extensive reading, disciplined by thought and reflection, and the mere legal martinet—the case lawyer or empiric, who uses legal precedent as the mason does a brick or stone, the carpenter a stick of timber, without under-

standing the philosophy, the logic, or lesson by which it was established.

As an orator, in the popular assembly, he was dignified, easy, natural. As a politician, he was keen and discriminating, a close observer of men. In conducting party measures, he moved with facility and success, perfectly understanding how to catch "the tunes of the times." There was nothing of the trimmer about him, for he was ever bold, and spoke "straight out," a Democrat, never furling the banner of his party for the sake of policy, but always carrying it aloft, or like Bruce at Bannockburn, planting its standard in the hard rock. He wielded a strong and polished pen, which was the true emblem of his mind. Either in speaking or writing, there was a beautiful concord between his thoughts and his language. He read with perfect selection, not with the voracity of an intellectual dyspeptic. He thought with accuracy and consistency. He had a fine imagination, which made him a poet, so far as to enable him to appreciate what is most excellent in poetry. His profundity and metaphysical acuteness, his delicacy of taste, caused him to turn away from much which passes under the name of poetry. Not that he wrote poetry, for he did not. Yet in his hours of relaxation from professional labor, he read the productions of those great poets which bear the impress and the seal of genius, learning, and taste; for one of the tests of genius is, that it calls forth power in the minds of others. He believed that the fictions of a great intellect "are often the vehicles of the sublimest verities," that its flashes often open new regions of thought, and throw new light on the mysteries of our being, "that often when the letter is falsehood, the spirit is the profoundest wisdom." There are those who believe, or affect to believe, that a lawyer, to be successful, must be as emotionless as stone, as imperturbable as Diagones. At an early period in the career of Edmund Burke, it was said of him that his writings and his

speeches, while they evinced much imagination, even poetic inspiration, they exhibited little of the stern, cold logic of the law. Time, however, demonstrated the fact, that with his poetic taste and imagination, he united the highest legal abilities. The schoolmaster who taught his pupils that laughter, under any circumstances, indicated a weak intellect, maintained a theory equally as plausible as those who ignore imagination or poetic taste in the legal profession.

Henry Kendall Smith was born on the island of Santa Cruz, April 2nd, 1811. His parents were Jeremiah Smith and Jane Cooper. They were of English origin. At the time of Henry's birth, the island was in the possession of the English, but in the year 1815 it was restored to the Danes, its original possessors. Mr. Smith was an architect and builder. Eminent and distinguished in his calling, he derived a large income from it. He was a man of energy, ability and perseverance. During the occupation of the island by the English, his pecuniary affairs were greatly enhanced, but the change of government resulted disastrously to him, reducing him nearly to poverty. Yet such was his social standing and respectability, that he was promoted to the rank of major in the Danish provincial army, a position which offered him a small income.

One day, however, while passing through a corridor leading to some casemates in a fort, a quantity of quicklime was, by some accident, thrown into his face. The effect was terrible. In dreadful agony he was conveyed to his room, where he suffered for many weeks. At length his confinement ended; but he was blind for life. At this time his family consisted of two sons and two daughters. One of the sons is the subject of this sketch.

Mrs. Smith, the mother of Henry, was a woman of uncommon endowment in person and mind. She was one of those who are not easily discouraged by mis-

fortune—one of those who ever look on the bright side of life, and fight its battles bravely. Like the mother of the great Corsican, she directed the attention of her children to the future. She held up before them the great, the gifted and the good, as models for them to follow. All sentiments of honor, of courage, of large-heartedness, of generosity, of kindness, she nursed and cherished in the hearts of her children. She taught them that success is conquest, and that no man holds it so fast as he who wins it by conflict. In short, she was one of those women who rule society by that invisible but mighty power, that tenderness, that potency of persuasion, which molds, guides and controls the intellect of her children. What princess, what sovereign can do more than this? Nay, where is the ruler that can do as much? It has been truthfully said, "that great men are ever much more the sons of their mothers than of their fathers, while seldom have great men seen their own greatness survive in their sons." Henry was, indeed, the son of his talented and noble mother. Many years after her death he beautifully said of her, "that the great rules of the gospel were so settled in her mind that she scarcely deliberated between degrees of virtue." Hence, the early home influences which surrounded Mr. Smith were of the purest and most elevated character.

With the first development of his nature he indicated a love of study, and at an early age he was placed in school, where he remained until he was eight years of age, when he was sent to Baltimore, and placed under the tuition of Rev. Dr. Berry, a distinguished minister of the Church of England, an accomplished and elegant scholar. At this time the elder Smith held heavy claims against the Danish government, incurred by its action in taking possession of Santa Cruz. But such was his anxiety to aid in the education of Henry, that he settled the whole in consideration of receiving at once, the small sum of fifteen hundred dollars.

In this settlement, he gave the following receipt: "I accept the sum of fifteen hundred dollars, in discharge of my claim against the Danish government, for the sole purpose of educating my son Henry, because I cannot delay until all that is justly my due can be collected by law."

As the boy was leaving home, his father said to him, "Henry, young as you are, you must know that you have now mainly to take care of yourself. According to your conduct, you will either sink or swim."

"I'll swim, father," was the laconic and earnest reply of the boy.

Actuated and inspired with this idea, he left the home of his father forever.

Guided by his accomplished and amiable preceptor, he made rapid progress in his studies, and perfected himself in the natural sciences, in the ancient and English classics, developing those intellectual powers which distinguished him in after life. The bright mind, the studious habits, and genial nature of the young man, soon won the confidence and warm esteem of Dr. Berry, and he labored to advance his pupil with unremitting zeal. He even aided him in his pecuniary matters. The young student's culture, both æsthetic and scientific, was in harmony with his fine physical and mental organization.

After attaining his thirteenth year, he received the rite of confirmation in the Church of England; and though but a boy of tender years, yet he formed his views of Christianity with caution, without asperity, and uninfected by bigotry. Through life he loved and revered the lofty ethics, the sublime teachings, the beautiful and consoling precepts of the Bible; and in the deep earnestness of his nature, he ever believed that "prayer ardent opens Heaven." Amid the most engrossing scenes of his life, such prayers touched the fountain of his feelings, and wherever he listened to them, whether in the great congregation, in

the domestic circle, or in the lowly cabin, he was impelled to say, "How dreadful is this place! this is none but the house of God." If, like Coleridge, he sometimes had thoughts and feelings better than his life, let those who are without faults cast a shadow upon his memory.

Though the mental powers and habits of research which young Smith exhibited, well fitted him for one of the learned professions, yet such were his circumstances, that he could not control the means for procuring a profession, and at the age of seventeen, he was placed as clerk in a wholesale dry goods store in the City of New York. Here he applied himself with great diligence to his new occupation, although the Promethean spark within rendered him conscious that he was designed for some other occupation. When the duties of the day were over, instead of plunging into amusement and recreation, he would retire to his room and study the speeches of Burke, Erskine, Phillips, Hamilton, Webster, and other great masters of eloquence. Here, too, he continued to pursue his classical studies, determined, whenever an opportunity occurred, to change his occupation. He waited for some time in vain, but at length an occurrence took place which changed the whole current of his life.

One morning while engaged in boxing some goods, his employer, who was standing by, sharply reprimanded him for his manner of procedure:

"You act like a woman, or worse, like a clumsy boor," said the merchant.

Just at that moment Smith, who was driving a nail into the box, struck his thumb. Instantly throwing down the hammer, he turned fiercely to the merchant and said:

"Box the goods yourself; pound your own thumbs, for that is all God ever intended you to do. He has got something else for me to attend to."

Putting on his hat, he left the store and the aston-

ished merchant forever. Some time previous to this event, he had been introduced to the late Daniel Cady, of Johnstown, New York, who was engaged in an important trial in the city. He had listened to that distinguished advocate's address to the jury with the keenest delight; he saw the judges, the jury, and the spectators listen with equal attention to his powerful argument. He heard the reply of Ogden Hoffman, which was replete with that logic and eloquence which rendered him peerless among the gifted lawyers of his day; and from that time Smith was inspired with a love for the legal profession, which continued until the close of his life. From that day he determined to become a lawyer.

Immediately after leaving his employer in New York, with the small sum of money which constituted his whole fortune, he hastened to Johnstown, found Mr. Cady, and in a few words related to him the history of his life, explained his present situation, and asked permission to enter his office as a law student. Mr. Cady remembered the bright, intelligent young man whom he had examined as a witness in New York, was pleased with his manners, and self-reliance, and welcomed him to his office, promising him his assistance and influence in obtaining his profession. This renowned lawyer and distinguished jurist did not live for himself alone; his life, whether as the private citizen, the lawyer, or the judge, was a model. Those feelings of unkindness which sometimes obscure and sully the goodness of excellent men, seldom or never passed over him. In his profession, amidst the collisions of rivals, his ambition was so controlled by his generosity and uprightness, that he was never known to tarnish with envious breath the honest fame of another, or withold a ready testimony to another's worth. His life was more than a model; it was a rich heritage to the American bar.

Soon after Mr. Smith commenced his legal studies, one of those common institutions, which have devel-

oped the genius of many a statesman, given to the bar and the pulpit many an ornament—a debating club, was formed in the village. Here his talents soon began to exhibit themselves, and his eloquence drew large crowds to the club room. Marcus T. Reynolds was at this time practicing his profession at Johnstown, and was a rival of Mr. Cady at the bar. That profound and gifted lawyer, early discovered in the young student, a mind of no common order, and though connected with a rival office, he sought his acquaintance and became his friend for life.

It is too often the case with young men, conscious of possessing fine intellectual powers, that they depend too much upon their natural endowments, and thus neglect that severe mental discipline, that thorough and patient investigation, without which, especially in the legal profession, distinction is seldom attained.

Few persons leap, Pallas-like, into full professional honors and success, though in this, as in all other professions, "impudence sometimes attains to a pitch of sublimity," and at that point it has produced many distinguished advocates, that is to say, advocates who make more noise in the court room, overhaul a more ponderous pile of books than he who has wasted the midnight oil in learning their contents. Such men scramble up the delicately graduated professional ladder, at a bound. In politics, they ascend, if possible, still more rapidly; there, they learn a profession, not exactly mentioned in the books, only by way of wholesome penalties, for being too close practitioners in their arts.

Mr. Smith was untiring in his devotions to his books, and his memory took the impression of what he read, like softened steel; it hardened when the page was closed, so that he never lost the thought or theme of the author.

He continued his studies with Mr. Cady until

he was ready for his examination, gaining means to defray his expenses by teaching school.

He was admitted to the bar in May, 1832, and commenced practice at Johnstown. In the following October, the Young Men's State Democratic Convention met at Utica, and Mr. Smith was one of the delegates from the County of Montgomery. Here he was first known in the politics of the State. A gentleman of distinguished position, who was present, relates that during the session of this convention, while a resolution of much importance was pending, a young man unknown to most of the members, several times attempted to obtain the floor, but without success—older and better known members always gained precedence with the chairman. Determined to be heard, he made another effort, and again failed.

At length Silas Wright, who was a member of the convention, and who sat behind the young man, arose, and, in a stentorian voice, exclaimed:

"Mr. Chairman! Mr. Chairman!"

The gentleman was recognized by that officer with the usual sign.

"I desire, Mr. Chairman," said Mr. Wright, "that you will listen to the young gentleman directly in front of me, whose name I have not the pleasure of knowing. I wish to hear him, sir, and I believe this convention does."

The chairman bowed in assent; and Mr. Smith, for he it was, courteously thanked Mr. Wright for his assistance, and then proceeded to deliver a speech which took the convention entirely by surprise, and gave him at once the reputation of an accomplished and logical speaker. It combined the daring in imagination, metaphysical in reasoning, and the inventive in theory.

The question before the convention was upon the choice of a proper candidate for governor. The name of James Kent having been introduced against

William L. Marcy, Mr. Smith favored the nomination of the latter.

"Mr. Speaker," said he, in the course of his remarks, "we are here as the representatives of the Democratic party of the great State of New York, whose history is coeval with the corner-stone of the nation, and whose destiny, no matter what vicissitudes await it in the future, is to stand with that corner-stone as long as a relic of it shall survive the lapse of time. I cannot, therefore, consent to name as the standard-bearer of that party, one who has rejected its great principles. Sir, I respect the gentleman whose name has been introduced in opposition to Mr. Marcy, as a man and a lawyer. I respect him for his purity, honor, and incorruptible integrity as a judge, and I will cheerfully award him all the honors, except this one. I am not willing, sir, to build him here a tabernacle to his political faith, though he comes in the transfiguration of the old apostles of the Democracy. I cannot forget, sir, his long and uncompromising devotion to the Federal party. Do gentlemen say that he has recanted his Federal faith? Sir, his party has wasted away before the breath of Democracy, its idols and its altars are broken, and where its incense was once burnt, the fires of other offerings glow. If he comes in the name of Democracy let us receive him, but let us reserve for the true and tried of our party—those who have never worshiped at the shrine of strange gods—the honors and distinctions of which they are alone worthy. I hesitate not, sir, to say that such is William L. Marcy."

This speech was received by the convention with the warmest applause. Mr. Marcy received the nomination for governor, and was elected, and ever held Mr. Smith in high esteem. Martin Van Buren, who was in the convention, and also Mr. Wright, both sought an introduction to him. The latter complimented him in a speech which he made in that body.

From that time Henry K. Smith continued one of the leaders of the Democracy in the State of New York until his death.

At that convention, he made the acquaintance of Hon. Israel T. Hatch, a member from Buffalo, upon whose invitation he made that city his home. He removed there in the spring of 1837. Immediately forming a copartnership with Mr. Hatch, who was then surrogate of the county, and a lawyer of great respectability, he at once commenced successfully the practice of law in his new home. He continued with Mr. Hatch until the autumn of 1838, when his business relations with that gentleman ceased.

After practicing alone for a short time, he was offered a copartnership with Hon. George W. Clinton, which he accepted. This period will be remembered in the history of Buffalo, by the formation there of several law firms, among which were Fillmore, Hall & Haven; Barker, Hawley & Sill; Potter, Babcock & Spaulding; Rogers & Flint; Warren, Allen & Allen. Amid this array of legal talent, Mr. Smith entered the arena of political strife. But he possessed a mind, which under strong and generous emotions, stimulated by collision with gifted antagonists, acquired new command of its resources, new energy of thought and new vigor of intellect. Ably sustained by a partner whose powers of mind, and legal ability, had already given him an eminent position in his profession, the firm of Clinton & Smith was second to none in the city.

After continuing in this relation some time, Mr. Clinton was appointed collector of customs, and the firm was dissolved. After this dissolution, Mr. Smith practiced with Mr. Williams for a time. That firm being dissolved, he accepted a partnership with General Isaac Verplanck, which continued for years under the most prosperous circumstances. At length it was dissolved, and Mr. Smith formed another business con-

nection with R. U. Stevens, Esq., which continued until the death of the former.

During all these changes in business, Mr. Smith's reputation as a lawyer gradually increased, until he stood in the front rank of his profession. As an advocate, he had few equals at the Buffalo bar, or in western New York. He was engaged as the counsel for one or the other of the contending parties, in most of the important trials which occurred in the city and vicinity in those days, many of which are now recorded as precedents in the reports of the Supreme Court, Court for the Correction of Errors, and the Court of Appeals. In all of these tribunals, Mr. Smith frequently appeared. His arguments on these occasions were regarded as able and searching forensic efforts. "They sent forth no scattered rays to dazzle with their brilliancy, but poured a steady stream of light, concentrated upon the point they would illume."

And it was on these occasions, when "the matter matched his mind," where his highest powers were fully put in requisition, that he justified the public in the rank it assigned him at the bar. One of the strong points of Mr. Smith's professional acquirements, was his successful manner in conducting a cross-examination: in this branch of practice he exhibited a sagacity, a power of reading the thoughts of the witness, of anticipating his answers, of ascertaining his peculiarities, his prejudices, his subterfuges, and, finally, of drawing forth "unwilling facts."

On one occasion, in the defense of a woman for murder, he interposed the plea of insanity. Entertaining no doubt that this was the true condition of the woman when she committed the dreadful crime, he threw his whole soul into the defense. Having, as he believed, established her insanity, he rested his case. The prosecution, determined on a conviction, introduced witnesses to establish her sanity, among whom was a certain village doctor not overstocked with learning, but making up in assurance what he lacked in acquire-

ments. This person testified, with considerable vain glory, that he had practiced medicine for a long time, during which he had successfully treated many cases of insanity; that he was familiar with the disease; that he had carefully examined the prisoner; that he had no doubt but that she was perfectly sane when the deed was committed.

"In fact," said he, "the whole diagnosis of her case convinced me that there was about her no cerebral disorganization; that she was only wicked, perverse, and awfully malicious."

With this flourish, he was about leaving the stand, thinking his task was done.

"Stay a moment, Doctor," said Mr. Smith. "Let me ask you a few questions."

With a look that plainly said, "Go ahead, sir, you can make nothing out of me," the doctor took his place upon the stand again.

"How old are you, Doctor?" asked Mr. Smith.

"I am forty-five, sir."

"How long have you practiced medicine!"

"About eighteen years."

"During that time how many cases of insanity have you treated?"

"Oh, I don't know; a great many."

"Well, have you treated a hundred!"

"I guess not; but if you will let me send for my books, I can tell."

"Never mind your books. Make an estimate of the number?"

"Well, then, say about forty."

"Very well, doctor, what is insanity?"

"It is a disarrangement of the faculties."

"Did you ever have any difficulty in ascertaining a case of insanity?"

"Not in the least."

"What are the symptoms of insanity?"

"The patient's actions, principally."

"What are some of those actions?"

"Why, he always shows a propensity to do wrong; to do what he ought not to do."

"Doctor, what is sin?"

"Sin—sin—why sin is a propensity to do wrong."

"Now, when a man does wrong, tell me how you ascertain whether the act is the result of sin or insanity?"

The answer to this question required more knowledge of pathology and theology than the doctor possessed. After making several attemps to answer, he declared he could not, and was permitted to leave the stand.

In the year 1838, Mr. Smith was appointed district-Attorney of Erie County. This appointment was tendered to him as a compliment to the lawyer. It was then, as it still is, an office requiring the exercise of much legal ability and learning. After discharging its duties with much credit, for seven months, he was compelled to resign, in consequence of the large amount of civil business which had accumulated on his hands.

In the year 1844, he accepted the office of recorder of Buffalo; in the discharge of the duties of which he evinced much judicial ability, a fearless integrity, and a modest independence. He saw nothing, knew nothing, cared for nothing, except the evidence and the law in a case. On the bench he presided with ease, dignity, and courtesy. With these qualifications, it was impossible that he should be otherwise than popular. He occupied this position for several years, and was at length succeeded by Judge Masten.

In the year 1850, he was elected mayor of Buffalo. During his mayoralty the governor-general and parliament of Canada, while on a tour of inspection of the public works, proposed to visit Buffalo. Accordingly, notice to that effect was sent to Mayor Smith, announcing the time when they would reach the city. But owing to some unforeseen event, the distinguished visitors were delayed until long after the appointed

time. The military and civic societies, which had turned out to receive the guests, in obedience to the order of the mayor, had been dismissed, when notice was received of their approach. With commendable activity he prepared for them such a reception as circumstances would permit. In a brief, dignified, and statesmanlike manner, he welcomed the parliament and its officers to the city.

The liberal, high-toned, and philosophic views of international policy which this speech contained, spoke highly for the abilities of Mr. Smith. It was received with much gratification by the Canadian parliament, and by the public generally. So gratifying was it to the visitors that copies were sent to the home government, with the whole proceedings, by Lord Elgin; and in due time, Earl Gray, then minister of foreign affairs, acknowledged the receipt of it to our secretary of state.

It would be strange if a man with the abilities, and in the situation of Mr. Smith, should not have been attracted by the allurements of politics. In many respects, he was singularly qualified for a political leader and statesman. Had he lived where his qualifications could have had a proper sphere of action, his name would have been written with the most distinguished statesmen of his time, for, after all, circumstances make the man. There are many, whose names are now high on the scroll of fame, who never would have been lifted from obscurity but for the recent rebellion. By his talents alone, Mr. Smith, as we have seen, at an early age, became a leader in a great and powerful party. That he had abilities for a far higher position than he ever attained, none will deny.

The doctrines and political philosophy of Jefferson were deeply impressed in his nature, and he clung to them with obstinate fealty. He belonged to that school of politicians, now almost traditional, about which lingers the charm of political honesty. Mr. Smith was repeatedly placed in nomination for the

Assembly, several times for State Senator, and twice for representative in Congress. But during these periods, his party in the district, was in a hopeless minority, and his defeat was a matter of course. Yet his name always gave strength to the party; and, as was once remarked by an opposing candidate, "The name of Henry K. Smith always raises voters from the vasty deep." No higher compliment than this could be given by a political antagonist.

In the year 1840 he was a delegate to the national convention which nominated Mr. Van Buren for president. His speech, made on the question of representation in this convention, was listened to with profound attention.

In the year 1848, he again represented his district in the national convention at Baltimore, which nominated Mr. Cass for president. In this convention the State of New York was represented by two sets of delegates. After the admission of both delegations, Mr. Smith delivered a speech on the manner of counting the votes of these delegations. It was a masterly and patriotic effort. Portions of it were inspired by prophetic truth. He was appointed postmaster of Buffalo in 1846, and held the office two years and a half.

In the spring of 1834, Mr. Smith was married to Miss Voorhies, the accomplished daughter of a wealthy merchant of Johnstown. This union, which was the result of mutual and deep affection, and which promised much happiness, was terminated by the death of Mrs. Smith, which occurred shortly after her marriage.

In the year 1848, he was united to Miss Thompson, daughter of Sheldon Thompson, Esq, of Buffalo. This lady, to much personal attractions, added many intellectual and shining qualities, with the possession of that prudence and polish which rendered her a proper companion for a man like Henry K. Smith.

But death again entered his household and removed her who was its life and light, the hope of his coming years. This estimable lady survived her marriage but eighteen months, leaving a son, Sheldon Thompson Smith. Her loss was a source of deep, almost inconsolable, grief to her husband. But in the care and education of his son, in his professional duties, in politics, in all the affairs and duties of life, he sought forgetfulness.

> "But ever and anon, of grief subdued
> There came a token like a scorpion's sting,"

and he could not forget the loved and the lost. His mother's softness and gentleness crept to his heart and the strong man mourned, how deeply was never known, save by those who knew him best. If as a balm to his "hurt mind," he sometimes sought lethe, or that which, at best, brings only chaotic misery, let us remember that there is no darkness like the cloud of sorrow, and if he, who in this wrong world, oppressed with mental pain, "worn with toil, tired of tumult, wounded in love or baffled in hope," cannot take the wings of a dove and fly from all error, he should find no unforgiving censors in these who have never suffered, and therefore have never fallen.

But Henry K. Smith was always "better than his mood." However baffled, sad or absorbed, his dignity, his sense of the lofty, and the beautiful, never deserted him; and these gave tone, elevation, spirit to each phase of his life, and rendered its record suggestive. His social qualities were of the highest order. His sensibilities vibrated to the lightest touch. He sought and drew to himself persons of the highest culture and refinement. His faults were, perhaps, as many as those of other men in his sphere of life and activity.

"Then why not speak of them more plainly?" perhaps some cynical critic may ask.

Simply because his virtues, his talents and useful-

ness have thrown them forever into the shade; for such is the destiny of excellence when linked to the common frailties of man.

A traveler who had a passion for visiting antique churches and cathedrals, always sought the charnels beneath them, and always disregarded the grand frescoes and beautiful altar pieces of Horberg, the Madonna of Raphael, the graces of Correggio, the architectural beauty and grandeur about him. When asked why this singular preference, he replied that amid so much perfection, beauty, and elegance, he was anxious to learn how much corruption there was, how much he could find that was revolting. Reader, mine is not the task, nor the preference, of that traveler. It is enough, if in the character and life of men like Henry K. Smith, the bar, society, and humanity have been adorned. Let others search the charnel house for human corruptions.

Mr. Smith died on the 23rd day of September, 1854, in the forty-third year of his age. And as was said by an eminent writer on the death of Sir Robert Peel, "the falling of the column revealed the extent of the space it had occupied."

HENRY WELLS.

His Early Education.—Enters the American Army in 1812.—Occupies Fort Erie.—Description of the Fort.—Battle of Fort Erie.—Narrow Escape of Wells.—Returning Home.—Commences the Study of Law with Vincent Matthews.—Called to the Bar.—John B. Skinner.—Commences Practice at Bath.—Character as a Lawyer.—Defends a Man for Shooting a Hog.—Pathetic Speech of Defendant's Attorney to the Jury on the Cruel Manner in which the Hog was Shot.—Singular Place where the Hog Received his Mortal Wound.—Defends a Lady for Breach of Promise.—Singular Nature of the Case.—Makes a Fortunate Discovery, and Wins the Case for the Lady.—Appointed District-Attorney.—Engaged in the Great Case of the People *v.* Douglass.—Description of the Trial.—The Conclusion.—The New Trial.—Circumstantial Evidence.—Removes to Penn Yan.—Continues his Practice There.—Elected a Justice of the Supreme Court.—Character as a Judge.—Samuel H. Wells.—Death of his Whole Family.—His Own Death.—Death of Judge Wells.—General Character.

HENRY WELLS was born at Kinderhook, October 13, 1794. His father, Dr. Benjamin Wells, was a highly respectable physician and surgeon. He was educated in the City of New York, and commenced his private practice there, but after a few years he removed to the County of Columbia. At the commencement of the Revolutionary war, he entered the Continental army as surgeon. During the occupation of New York city by the Americans, he was connected with the military family of Major-General Putman. He was afterwards promoted to the position of surgeon on the staff of Washington, where he served two years. At the close of the war, he returned to Kinderhook and resumed his practice. At length, attracted by the glowing descriptions which were given of western New York, he was induced to visit that distant region. Finding the reality equal to the description, he selected a place of great natural beauty, on the banks of the Crooked Lake for a residence. This was

in the town of Wayne, Steuben County. Returning to Kinderhook, he formed a colony of his friends, and removed to "their new home in the west." At this place, Henry spent his boyhood days, excepting the time in which he was absent acquiring his education. At a very early age, he exhibited a thoughtful, intelligent mind, a love of study and investigation; his father, therefore, determined to give him the advantage of a good education. Accordingly, he was sent to a select school for boys, which was taught in his father's neighborhood, by a Presbyterian clergyman, who was an excellent English and classical scholar. Under the instruction of this gentleman, he made great proficiency, which encouraged his father to give him better advantages. Accordingly, on attaining his fourteenth year, Henry was sent to the Kinderhook Seminary, then one of the most celebrated institutions of learning in the State. Here he remained until he was eighteen years of age, when, owing to the delicate condition of his health, he returned home, where he resided until the spring of 1814. Dr. Wells had now retired from practice, turning his attention to the cultivation of a large farm. Under the advice of his father, Henry engaged in such labor upon the farm as his health would permit. His leisure hours were devoted to a review of his studies, and to a critical reading of the English classics. War with England was then raging; young Wells soon caught the martial spirit which everywhere pervaded the State, and he determined to enter the service of his country. In the spring of 1814, the war spirit became intensified by rumors of invasion from the British, which were rife throughout the State, partly founded on conjecture, and partly on reliable information. The whole western and northern frontiers were in a state of wild excitement and alarm. Governor Tompkins prepared to meet all threatened danger with patriotic activity, which inspired confidence in the people, while it gave the Empire State the proud distinction of being fore-

most in sustaining the patriotic Madison in his stern grapple with the invaders of our country. Troops were rapidly raised, perfected in military discipline, hurried to the field, and everywhere the roll of the drum called the patriot to duty. Early in the spring of 1814, a company was recruited in the county of Steuben; and was commanded by Captain John Kennedy, of Bath.

Among the first who enlisted into this company was young Wells. He was elected sergeant, and immediately commenced the work of perfecting himself in military knowledge and drill. He soon became a good tactician, and was promoted to the rank of ensign. His company was attached to Colonel Hopkins's regiment of infantry, and early in the following July, took the field at Black Rock. After frequent skirmishes with the enemy, the regiment crossed Niagara river, and joined the American forces then holding Fort Erie and the works surrounding it.

This once powerful and important fortress stands on the Canada side of the Niagara, nearly opposite Buffalo. Its gloomy walls, dilapidated bastions, and ruined casemates stand out grim and solitary against the western sky, telling of sieges, battles, attacks and repulses, of death "in the imminent deadly breach," and finally of all "the pomp and circumstance of war," with its havoc and destruction. Many a vanished year has swept over those walls, black with the miner's blast upon their hights. Heroes have trod the spot, and on their ashes the careless visitor now treads.

In this fortress, and in the works about it, on the 16th day of September, 1814, lay the American army. Below, and partly surrounding it, were the British forces, who, at an earlier period of the war, had been driven from Fort Erie by the Americans. Determined to regain possession of so important a work, and annoyed by the Stars and Stripes floating de-

fiantly over their own dominion, they had fiercely besieged it for a long time.

Day after day their shot and shell rained upon the fort, while their works and parallels were gradually approaching it. Nearer, and nearer, they advanced, guided by their skillful engineers, and now their commander confidently believed that within a few short hours, he would re-enter Fort Erie with his victorious columns. But on the morning of the 17th of September, the Americans suddenly moved from their work, fell like a thunder clap upon their besiegers, and after a short but sanguinary battle drove them from their works to the plain of Chippewa, with a heavy loss in killed, wounded and prisoners.

In this battle young Wells exhibited the cool intrepidity of a veteran. As his regiment entered a piece of woods in front of the British, they opened a murderous fire of grape and canister upon it, and many of his comrades fell by his side; but the enthusiasm of the Americans could not be checked, and over the dead and dying, they rushed to victory. As they were entering the works of the enemy, a British sergeant discharged his musket at young Wells; the bullet grazed his side, and mortally wounded a young soldier who was partly in his rear. The next moment the sergeant was captured, and would have deen despatched on the spot, had not Wells interfered and saved his life.

Soon after the battle of the 17th of September, Lieutenant Wells moved with his regiment across the river to Black Rock. He continued in the service until the middle of the following November, when he resigned and returned to his home.

While a student at Kinderhook, he decided upon entering the legal profession, and soon after retiring from the service, he entered the office of Vincent Matthews, at Bath, as a student at law.

Dr. Wells had made the acquaintance of this eminent lawyer in the city of New York, while the

latter was pursuing his legal studies in the office of Col. Troupe of that city. A warm friendship commenced between them, which continued after they had become residents of Steuben county, and through life. The ingenuous character and respectful manner of Henry, his candor, intelligence and general information, early attracted the attention of Mr. Matthews, and he readily received the young man into his office, extending to him every advantage in his power for the prosecution of his studies. Mr. Wells became at once a close and diligent student, reading, not simply to prepare for examination, but for the purpose of enabling himself to discharge with honor the high and responsible duties of a counselor at law. He adopted the maxim of Lord Bacon: "It matters not that you read much or that you read constantly, unless you read with understanding and with memory." It was not long before the fruit of this devotion to study began to exhibit itself. "After he had been in my office a year and a half," said Mr. Matthews — speaking of young Wells — "he could draw a strong and practicable brief, with copious and correct reference to authorities."

This attention to his legal education did not cause him to neglect his classical and literary studies. Through life he was a close student of England's great poets. He particularly admired the healthy honesty and manliness developed in the style and sentiment of Pope; the dignified and solemn utterances of Young; that noblest monument of human genius, Paradise Lost; the intuitive sagacity, the keen appreciation of life, and vivid picture of the passions, which appear on the page of Shakespeare; the freshness, vigor, and beauty of a rural life, which the pen of Thomson describes. Indeed, there is nothing, even in the Bucolics or the Georgics of Virgil, which is as redolent of the fragrance, of the forest and the field, or which brings home more forcibly the as-

pects of pastoral life, and the vicissitudes of the changing year, than Thomson's Seasons.

From the deep and splendid philosophy of the law, its great liberating and enlightening means of human action, Mr. Wells turned to such works as these, and drank in the inspirations of their authors. Those who knew him best, those who saw most of him in his hours of relaxation from professional and judicial labor, or those who watched him in that fatal decline, while yielding with dignity to the last enemy, as a hero yields to a conquering foe, will remember what interest and grace, the study of such works lent to his conversation. And yet he was apparently a man of literal and prosaic character.

There is often in the heart of the cold, the callous and unimpassioned, a place where beautiful thoughts and bright images, invested with colors which the passions throw over them—sympathies with suffering virtue—touches of tenderness, and even poetic feelings, live and glow, unknown to all the world, just as a beautiful and brilliant gem sometimes flashes its solitary radiance in a cold and distant chamber, clear, sparkling, but almost unknown.

After remaining in the office of General Matthews three years, Mr. Wells was fully prepared for his examination; and in October, 1817, he was called to the bar. Hon. John B. Skinner, of Buffalo, was also in the same class, and admitted at the same time. Three years after their commission as attorneys, these gentlemen were in the counselors' class together, and both admitted to the degree of counselor. Subsequently, they often met at the bar as opponents, while they were often associated in the trial of causes. In the commencement of their professional life, a mutual respect was engendered, which increased as years wore away.

After a long and brilliant professional career, Mr. Skinner has retired from the bar, to the enjoyment of the comforts and happiness of domestic life.

Immediately after his admission, Mr. Wells opened an office at Bath, and commenced practice. While a student, he made many friends among the leading business men of Steuben county, who held his probity and abilities in high esteem. They now gave him their patronage and influence. With such aid, joined to untiring industry, he soon gained a respectable and remunerative practice.

In June, 1818, he married Miss Margaret Haight, a daughter of General S. S. Haight, then a prominent member of the Steuben bar. Much domestic happiness resulted from this union; and that attachment which commenced in the early summer of life, continued undiminished amid the sober scenes of autumn and the approach of winter.

In the commencement of his practice, Judge Wells often appeared in justices' courts, where he frequently met lawyers of ability and high standing; although these courts were, as they are now, a kind of practicing school for young lawyers, the skirmish grounds for older ones. He met, in these tribunals, every variety of mind and ability.

Some years before his death, he related in the presence of the writer, a scene which occurred in one of those courts: "An action had been brought before a justice, by a man against his neighbor for shooting a hog, the property of the plaintiff. Mr. Wells appeared for the defendant. For the plaintiff there appeared a famous pettifogger, noted for his pompous eloquence, his brazen impudence, his sharp and cunning tact, and his want of everything like a systematic knowledge of the law. A jury was impanneled; the case was opened to them by the plaintiff's counsel in the following pathetic *and moving language:* "Gentlemen of the jury, you are impanneled here to try a cause of the vastest importance to this community. The defendant has been guilty of a crime and cruelty which the annals of crime has no equal, which shows him to be the most carniferous wretch that walks this

celestial foot-ball. Gentlemen, when I think of it, I can hardly help gushing out in a flood of tears and crying out with one of the Apostles, 'Oh, that my head was waters, and mine eyes a fountain of tears!' While this poor unoffending hog, whose only bad trait was an innocent waggishness, and that confined to one of his most extreme extremities, was quietly nipping the miserable grass that grew in this defendant's wretched pasture, thinking of no harm, this cruel monster, armed with a deadly gun loaded to the muzzle with missiles of death, stealthily approaches his poor unconscious victim, and discharged the whole deadly contents of that still deadlier gun right into his solar system, who with one fearful squeal of agony, fell dead on the ground!"

One of the earliest cases which Judge Wells conducted in the Supreme Court, was an action brought by one Breed, a widower with several children, against a wealthy, middle-aged widow lady for breach of promise. The novelty of the action, and the position which the parties occupied in the community, attracted much attention to the suit. The plaintiff was a near neighbor of the defendant, and was often employed by her in various matters. He alleged that she had frequently promised to marry him; that after some delay the day for the happy event was fixed, which for various reasons, both parties desired should be kept secret. The day came, but the lady refused to perform her part of the contract; and the disconsolate lover of forty-five was left to exclaim with the old poet, "Frailty, thy name is woman."

To assuage his grief, and to bring consolation to his wounded heart, he sought the redress which the law in such cases vouchsafes, and the lady was prosecuted for the sum of five thousand dollars. She alleged that no thought of marrying the plaintiff ever entered her heart; that the matter was concocted by the plaintiff and his friends to extort money from her.

Mr. Wells fully believed the lady, and prepared to defend her with all his energies.

An issue was joined, containing these allegations in substance, and the cause came on for trial at Bath, before Hon. William B. Rochester, then one of the circuit judges, in October, 1823. On the trial the plaintiff attempted to prove the engagement by circumstances, but failed. At length a witness was placed upon the stand, who testified distinctly to the circumstance of having been present at a conversation between the plaintiff and the lady, in which she stated the conditions of the engagement and the time when the marriage was to take place; his evidence, given with intelligence and much candor, seemed to fix the fate of our fair defendant, and her defense was *regarded as hopeless*. The lady in great distress of mind insisted to Mr. Wells, that the story of the witness was a fabrication, that she had never seen the man but once before, and then he came with the plaintiff to her residence for the purpose of purchasing a horse; that she, with the two men, talked about the price of the animal for some time, and they left. Unfortunately for her there was no other person present. Mr. Wells had no recollection of having met the witness before; and yet his countenance was familiar to him. The more he studied the features of the man, the more he was convinced he had somewhere met him before.

Suddenly it occurred to the puzzled lawyer that about the time when the fellow pretended he heard this conversation between the plaintiff and the lady, he was attending court at Angelica, and that a man bearing a strong resemblance to the witness was tried, convicted, and sentenced to jail for some offense. Mr. Wells believed the witness to be that person. But how could he make this appear? If he could do so, his client would succeed; if not, then she must be disastrously defeated. A moment's reflection decided his plan of action. After a close cross-

examination of the witness, in which nothing favorable to his client was elicited, the plaintiff rested in triumph. Before opening the cause for the defendant, Mr. Wells begged the indulgence of the court for a few moments, for consultation. He immediately despatched a trusty person to Angelica with a subpœna for the sheriff of Allegany County, and for a copy of the record of the witness's conviction from the clerk of that county. He then proceeded to open the defense to the jury, and of course, he occupied considerable time. When he had finished his opening remarks, it was night, and the hour for the adjournment of court had come. The next day, before the trial was concluded, the sheriff of Allegany, and the record of conviction were in court. The first, established the identity of the witness, the second, the fact that he was in jail at the very time he pretended he heard the admission of the lady.

This of course turned the tables, and the lady was triumphant. To the young lawyer, the result of this case was very gratifying, and added much to his reputation. Applying himself with untiring industry to his profession, he soon attained a very extensive practice, not only in Steuben, but in the adjoining counties. Among the lawyers practicing at the Steuben bar, Mr. Wells commenced his practice, were Vincent Matthews, William B. Rochester, Edward Howell, Daniel Cruger, General Haight, Mr. Woods; names which distinguished and adorned the bar. Soon after, Mr. Matthews removed to Rochester. Early in 1823, Mr. Rochester was appointed a circuit judge, and Mr. Cruger was in Congress. Thus, many formidable competitors were removed, leaving Mr. Wells a more open field of labor.

In October, 1824, he was appointed District-Attorney of Steuben County; an appointment which was highly complimentary to him as a lawyer. His predecessor was Daniel Cruger, who was distinguished throughout western New York as a lawyer and writer,

eminent in Congress for legislative abilities of high order, and a politician of indomitable energy and power. His life appears in another part of these sketches.

Soon after Judge Wells was appointed District-Attorney, a case occurred which called into action all his professional and intellectual powers. It was the well known case of the People *v.* Douglas. The defendent in that case was charged with having murdered a citizen of Steuben county by the name of Ives, under circumstances of great atrocity and cruelty. The victim was found in a piece of woods mortally wounded, in a speechless and dying condition. Who the perpetrator of the foul crime was, remained for some time unknown. At length suspicion pointed to Douglas; he was arrested, indicted, and in January, 1825, brought to trial. The matters relied upon for convicting him were merely circumstantial, but they pointed to him as the guilty man. The prisoner had many friends, and some means. He prepared for a vigorous and determined defense. Hon. Edward Howell, Zibra A. Lealand, and S. S. Strong, Esqs., of Bath, were retained to defend him, while the prosecution was of course conducted by Judge Wells. The trial occupied several days, and was exceedingly interesting. Hon. William B. Rochester presided, assisted by Hon. James Norton, then first judge of Steuben county. Every effort was made to save Douglas which his eloquent and able advocates could use. Many abstruse and difficult questions of law arose, and were discussed, many thrilling circumstances developed, in all of which Mr. Wells exhibited ability and learning equal to the occasion.

Though he did not possess the highest order of talent, yet his mind was well-balanced, strong, and well stored with the learning of his profession. Nor was he an easy and fluent speaker; but his calm judgment, good taste, and ready memory rendered him

convincing and interesting. His argument to the jury was regarded as an able and powerful effort, and the accused was convicted. But on the trial, a circumstance occurred which set aside the verdict of the jury, and gave him a new hearing. While the trial was in progress, during one of its recesses, the jury visited a place where spirituous liquors were sold, and partook of refreshments, some of them drank intoxicating liquors, though not enough to affect them in the least. But the counsel for Douglas alleged this act of the jurors as a ground of error. The case was carried to the General Term of the Supreme Court, and on the 25th of February, 1825, it came on for argument at Albany: the conviction was set aside, and a new trial granted to the prisoner. This case is reported in the 4th of Cowen.

In due time the new trial took place; the counsel for Douglas again interposed a powerful defense. The dangerous tendency of circumstantial evidence was duly urged to the jury. A few years previous to this trial, a work entitled "Theory of Presumptive Proof," appeared in the legal world. It was a profound and able dissertation against this kind of evidence, and in the language of Judge Livingston it had furnished many criminals with a ready magazine of defensive armor.

This work was used with power and ability on the trial of Douglas; its argument and theory, as well as that of the defendant's counsel, was met by the firm, clear, and flexible logic of Wells. The jury were made to understand that circumstantial evidence is often more convincing than positive proof; as witnesses may be mistaken or mislead, whereas a concatenation and fitness of many circumstances, made out by different witnesses, can seldom be mistaken, or fail to elicit the truth, and that although such evidence should be received with caution, nevertheless, circumstances are often so strong as to amount to satisfactory proof. And thus it was in

the case of Douglas; no eye save Omniscience witnessed the deed: but there was a train of circumstances which pointed indubitably to his guilt. He was therefore convicted and executed. In the discharge of his official duties, Judge Wells was called upon to conduct several important prosecutions for the people during his term of office, and he was successful in most of them. He never had an indictment quashed or set aside, notwithstanding the great technicality of those instruments, and the care required in drafting them. He continued to discharge the duties of District-Attorney until the year 1829, when his increasing civil business compelled him to resign. Hon. Edward Howell was appointed in his place.

Mr. Howell is a resident of Bath, and the oldest member of the Steuben bar. Several years ago he retired from a large and distinguished practice. His career as District-Attorney, representative in Congress, his weight of character at the bar and in private life, his example as a Christian gentleman, has caused the esteem and regard of all to follow him into retirement.

After practicing at Bath ten years, Judge Wells removed to Penn Yan, where he continued to practice with success and distinction until elected a justice of the Supreme Court. As a lawyer, he was not one of those

> "Who pit the brains against the heart,
> Gloss misdeeds—and trifle with great truths."

At the bar, he gained the attention of the court and jury by the calm, candid manner in which he presented his case. Though not a rapid thinker, though sometimes slow in coming to conclusions, yet such was the perfect preparation which he gave his cases, that he was always formidable as an antagonist. He was like a heavy piece of artillery, not easily changed about, but always well and effectually aimed. Courteous and composed in his manner, when he arose to discuss a legal question or address a jury, he al-

ways commanded respect and attention. And yet, as has been before stated, he was not an eloquent speaker, not one of those who engage the fancy of their hearers, without affecting their understanding. His arguments were solid and plain, bearing directly upon the point. He was once engaged in the trial of an important cause, at Waterloo, in which the counsel opposed to him, made an exhibition of his eloquence, and, in his conceit, a sarcastic allusion to the plain speaking of his opponent. In his reply, Mr. Wells simply remarked that he never attempted the high flights of oratory which the counsel opposed to him did; and he could only say of him as Junius did of the king, "The feathers that adorn him support his flight; strip him of his plumage and you fix him to the earth," and that he should endeavor, in a quiet way, to take some of the gentleman's plumage from him, just enough, he trusted, to keep his good friend out of the clouds; and he succeeded to the admiration of all present.

The constitution which was formed in the convention of 1846, made a radical change in the judicial system of the State. It provided for the election of judges by the people; it abolished the Court of Chancery, and gave equity powers to the Supreme Court; it annulled the old distinctions between actions, and provided for a Code of Procedure which abrogated all the nice mathematical rules which governed "the mutual altercation of parties," known as the pleadings in a suit, and which had existed for ages. At first, the bar beheld these sweeping innovations with dismay. The Court of Chancery had come down from the days of the Aula Regia; it had been sustained in England through the reign of every monarch from Henry II., to Victoria; while the office of chancellor had existed from the days of Maurice, in the reign of William the Conqueror, to the present time; its powers and duties gradually merging from the mere keeper of the great seal, to the highest judicial office in the nation;

and in this country, from the establishment of a colonial government, to the days of Walworth, who saw it pass away with its honors and dignities. The Court of Chancery was one of the great tribunals of the State; its power arising chiefly from supplying the defects of the common law by giving a remedy in a class of cases, for which that law provided none, and by disregarding certain arbitrary and absurd rules of the law courts. Thus it possessed many advantages, in a country like this. But it had become in some respects a tedious and expensive piece of legal machinery, with its chancellor, vice-chancellor, its masters, examiners, exception masters, taxing masters, &c. These offices were all abolished, and the new judges were given equity power.

An elective judiciary was regarded as the most dangerous innovation of the new constitution. "The character, influence, and position of American judges, are unlike those of any other nation. In many respects, their official influence is unbounded. They come more directly in contact with the people than the English or French judges, and thus their influence extends beyond the limits of courts. In the recreation of private life, as well as the turmoil of public business, abroad and in legislative assemblies, the judge is constantly surrounded by men, who are accustomed to regard his intelligence as superior to their own; and having exercised his power in the decision of causes, he continues to influence the habits of thought and the character of the individuals who surround him."

It was urged, that to bring the judiciary within the range of politicians, and party managers, would tend to its corruption, would render the judges dependent upon partizan manipulators. But fortunately, the selection of judges, is now almost exclusively committed to the lawyers; and as has been well said, "When the people are intoxicated by the impetuosity of partizan zeal, or of any ephemeral excitement, they are

checked by the almost invisible influence of its legal counselors. Besides, the judge must be a lawyer, who, independently of the veneration and respect for the law, for regularity, and order, which he contracted in the study of his profession, derives an additional desire to maintain those legal attainments, and that high character, which commended him to his professional brethren, and which thus elevated him to a distinguished rank among his fellow citizens." And thus the judiciary is silently, but powerfully protected. Against the appointment of judges, it was urged that an ambitious executive, to perpetuate his own power, and promote his designs, could appoint corrupt and inefficient judges, on party grounds, or remove them, to subserve party interests, or prejudices. Able and pure judicial officers, could be removed to promote the interests of demagogues. Hence, it is most prudent and safe to intrust the judiciary to the many, rather than the one man power.

In July, 1847, the first judicial election under the new constitution took place. In the seventh judicial district, Thomas A. Johnson, of Corning, Henry Wells, of Penn Yan, Samuel L. Selden, of Rochester, and John Maynard, of Auburn, were elected justices of the Supreme Court. These gentlemen were lawyers of the highest and purest professional character. As they had adorned the bar with their learning and talents, they added lustre to a bench, which, since the adoption of the first constitution had been the admiration of the nation and the world; a bench, whose opinions are unquestioned authority wherever judicial decisions and opinions are known or respected. For twenty-two years and over the judges of the seventh judicial district have upheld the learning, the dignity, and purity of the Supreme Court of the State of New York, and what has been said of these judges, may well be said of those who at this time occupy the bench of the State; and thus an elective judiciary has

been a success and a triumph in the State of New York.

Judge Wells discharged the duties of a justice of the Supreme Court, nearly twenty-one years. The legal reports of the State bear ample testimony to his ability and research. In the language of another, "He entered upon the discharge of his duties with great industry and directness of purpose, and the student of the earlier volumes of *Barbour's* and *Howard's Reports* will find the traces of his judicial labors to be quite as numerous, and quite as valuable as those of any other member of the court. His well considered and well reasoned opinions, both upon new questions of practice, and upon questions of principles of law, may be reckoned by the hundreds, and his contributions thus made to our judicial lore would in the aggregate fill volumes. For clearness of expression, thoroughness of discussion, for all practical purposes, calmness, impartiality, and all absence of pretension or show, they are certainly above mediocrity. His opinion of the leading case of Field *v.* The Mayor of New York, may be cited as a fair illustration of his manner in this particular. It settled a new and important question by language just sufficient to express, in no ambiguous terms, the views of the court, and to indicate clearly, the limits and boundaries of the decision; and did all this, with a citation of authorities, not ostentatious, but sufficient to render his reasoning impregnable."

His decisions were distinguished not so much by boldness and excursiveness, as by clearness, steadiness, justice and right. They derived their strength from that fairness, rectitude and simplicity, that love of the true and the useful which entered so largely into his moral constitution. Accordingly they are characterized by impartiality, and graduated by an independence, which placed him far above the reach of influence from any source, and beyond the corruption of politics, or the regard of party. He had

strong partizan sentiments, and adhered to them with legitimate firmness. But, on the bench, in the discharge of his judicial duties, party, politics, and friends were alike forgotten, and he stood the High Priest of the law, in whose censer unhallowed incense never burned.

The modest firmness with which Judge Wells adhered to his opinions, is exhibited in the case of Newell *v.* The People, in the Court of Appeals. The case involved doubtful questions of law, and attracted public notice. He dissented from the opinion of all the members of the court, standing entirely alone, and wrote an opinion of which the following is the concluding part:

"In the conclusions to which I have arrived, I regret to find myself standing alone among the members of the court of *dernier resort*, who take part in this decision. This circumstance, perhaps, should lead to a distrust of my own judgment, even if it failed to shake my confidence in the correctness of the views I have expressed. However this may be, I yield to the decision, if not willingly, yet respectfully."

He was in every sense, whether at the bar, on the bench, or in private life, the true gentleman. And he did much to establish those agreable amenities which now exist between the bench and the bar. The younger members of the profession will remember with pleasure the kindness, suavity and patience with which he listened to their first forensic efforts. Many who came, conscious of ability, but with shrinking timidity, were encouraged by him—their mental resources drawn out, and they were led up to a confidence and self-possession which now sustains them in the collisions of professional strife.

The faults with which, as a judge, he was charged, were principally that he was too slow in the dispatch of business at the circuit, and that he did not possess that rapidity of thought which was necessary for a

judge at *nisi prius*. Without doubt there were some grounds for this complaint; and yet the correctness with which he disposed of business, was an ample offset for this fault; and it is remarkable that his decisions made on the trial of causes, were seldom reversed by the appellate court.

His repeated election by the people sufficiently attests the esteem and confidence in which he was held in the district, and the record of those frequent elections, is the highest encomium that can be paid to his memory.

Judge Wells died at Penn Yan on the seventh day of March, 1868, in the seventy-fourth year of his age. Mrs. Wells survives him. Their family consisted of nine children—two sons and seven daughters. Of those, four daughters only are living. They are Mrs. T. B. Hamilton, Mrs. T. A. Johnson, Mrs. S. B. Robbins, and Mrs. J. B. Welch. The late Samuel H. Wells, an eminent member of the Yates County bar, was a son of Judge Wells. He died on the eighteenth day of October, 1867, aged forty-eight years.

There is a melancholy interest attached to the history of Mr. Wells. Within the space of a few years, his wife and all his children, three in number, were taken from him by the hand of death. His wife, an amiable, lovely, and accomplished woman, to whom he was tenderly attached, died a few months previous to her husband. The stricken husband and father thus beheld his household treasures torn from him, his earthly idols snatched away. In the depths of his heart he felt that they could never come to him, but that he should soon go to them. A few weeks he struggled with his sorrows, a few weeks he lingered around his desolated home, and then followed his loved ones, "where the beautiful fade not away."

For many years, Judge Wells was a conscientious and an undeviating member of the Presbyterian Church. His religion, though strong and earnest, was in unison with his whole character, calm and

rational; though of adamantine firmness, it was attractive, cheerful, lovely. He was a most severe and critical judge of his own conduct.

He looked upon religion as intended to regulate our intercourse with one another here, by adding the ordinary sanctions of temporal morality; the rewards and punishment of another life, "according to the deeds done in the body." He was not satisfied with apparent religion, but was particularly interested in those instructions from the pulpit, which enjoin a deep, living, all pervading sense of Christian duty and responsibility; and he united with his Christianity a deep interest in the history of good and great men, a veneration for enlightened legislators—for the majesty of the laws, a sympathy with philanthropists, a delight in efforts of intellect, consecrated to a good cause. For he possessed that congeniality with spiritual and lofty truths, without which, the evidences of religion work no deep conviction, without which, faith cannot assert her heartfelt, her glorious work.

VINCENT MATHEWS.

His Birth.—Completes his Education with Noah Webster.—A Student in the Office of Colonel Robert Troup.—Burr.—Pendleton.—Yates.—Kent.—Spencer.—Contest for Governor between Judge Yates and George Clinton.—Called to the Bar.—Removes to Elmira.—Elected to the State Senate.—Appointed with Judge Emott to the Onondaga Commission.—Elected to Congress.—Appointed District-Attorney for Several Counties.—Daniel Cruger.—Mathews Removes to Bath.—His Success as a Lawyer.—Removes to Rochester.—His Popularity.—Elected to the Assembly.—Appointed District-Attorney for Monroe County.—His Politics.—His Manner as a Speaker.—His Character as a Lawyer.—Anecdote.—His Private Character.—Letter from the Young Lawyer.—Anecdote.—Scene of his Death.

VINCENT MATHEWS was born in the county of Orange, N. Y., June 29, 1766; hence his birth occurred in a solemn and eventful period; a period which determined the character of ages to come—when powerful evils were struggling for the mastery; when men gifted with great powers of thought and loftiness of sentiment—statesmen with broad and original views of human nature and society, imbued with self-denying patriotism, were summoned to the conflict. "Thus he was one of those through which one generation speaks its thoughts, feelings and appeals to another."

At an early age he was sent to a popular and flourishing high school, at Middletown, N. Y. Although fully prepared, he did not enter college, but finished his classical education under the instruction of Noah Webster. The acquisitions of that profound and accomplished scholar rendered him a proper tutor for a mind like that which young Mathews possessed. The steady improvement, the cultivated and

refined taste, the severe industry, and the courteous manners of the pupil, soon endeared him to his revered instructor.

Having finished his classical studies, he went to New York, and in 1786 commenced the study of law in the office of Colonel Robert Troup, a highly distinguished lawyer and politician, an early and undeviating friend of Aaron Burr. Here Mr. Mathews came in contact with Pendleton, Judge, afterwards Governor, Yates, Chief Justice Morris, Burr, and others whose names are brilliant in the history of New York, and distinguished in the annals of our nation. He had thus rare opportunities for learning from men as well as from books. It was his privilege to see how justice was administered by Morris, Yates, Spencer, Kent and Savage. He had opportunities to see Hamilton and Burr in the forum, and to observe how forensic questions were managed by those master minds.

While pursuing his legal studies in New York, the celebrated gubernatorial election between Judge Yates and George Clinton took place, which, after a severe and bitter contest, resulted in the defeat of the former by a very small majority. The prominent partizans of Judge Yates were Hamilton, Burr, Troup and Duer.

Previous to this election, the Federal party, under the lead of Hamilton, was dominant in the State. But so great was the popularity of Mr. Clinton that the Federal leaders were obliged to combine all political elements against him in order to secure any hope of success; and this is the only instance in which Hamilton and Burr ever acted together politically. Although the latter opposed Mr. Clinton's election with all the strength and power of his mind and influence, yet, shortly after his election, the Governor tendered to Burr the office of Attorney-General, which, after much hesitation, he accepted. In those days, that office was one of the highest and most important

in the State. In the language of another, "the offer of Mr. Clinton was a tribute to the lawyer merely."

Among such men, and amid such scenes, Vincent Mathews prepared himself for the bar; and in the year 1790 he was admitted to practice. After his admission, he remained with Colonel Troup for some time. But, tempted by the many avenues of enterprise which a new country opens, in the year 1793 he removed to the county of Tioga, and became a resident of Elmira. Here, he soon entered into a successful practice. So rapidly did he gain the confidence of the public, that in the year 1796, he was chosen to represent the Western Senatorial district in the twentieth Senatorial session of the State. The Senate at this time numbered forty-three members, among whom were Ambrose Spencer, General Philip Schuyler, of revolutionary memory, Philip Livingston and Jacob Morris. In a legislative body composed of such men, Mr. Mathews took a respectable and influential position.

Soon after he retired from the Senate, a question of much difficulty and embarrassment arose in this State, concerning the military bounty lands in the county of Onondaga. After various abortive attempts at an adjustment of this difficulty, the Legislature of 1798 passed a law creating a special tribunal, to whom the matter was referred for hearing and settlement, known as the Onondaga Commision. Mr. Mathews and the late Hon. James Emott were commissioners. As this was, in its nature, a judicial office, it demanded much legal learning, and, therefore, these gentlemen were peculiarly well qualified to undertake the responsible and arduous duties thus conferred upon them. The successful and satisfactory manner in which they discharged their trust exhibited their ability and talent.

In the year 1809, Mr. Mathews was elected to the eleventh Congress, from the then fourteenth Congressional district, which consisted of Cayuga, Seneca,

Steuben, and Tioga Counties. General Erastus Root, of Delaware County, and subsequently so distinguished in the history of this State, was elected that year to Congress for the first time. Mr. Root represented that district for many years in succession.

General Mathews served but one term in Congress. After retiring from his congressional duties, he returned to the practice of his profession, and was appointed District-Attorney in the year 1812; a position which was then second only to that of Attorney-General. The sphere of his duties embraced several of the western counties, and represented a large and extensive field of official and professional labor. The manner in which he discharged the responsibilities of this office, greatly enlarged his professional reputation.

Daniel D. Tompkins was then Governor, and, as Mr. Mathews stood high in his regard, he tendered him the office of District-Attorney, as a tribute of respect to the accomplished lawyer and gentleman. His professional business increased to such an extent, that he was compelled to resign after holding the office a little over two years. Daniel Cruger, an eminent lawyer then residing at Bath, was appointed in his place. General Mathews continued at Elmira until the year 1816, when, at the solicitation of many friends in the county of Steuben, he removed to Bath, then, as now, one of the most attractive villages in the State. Here his popularity continued to increase, and he soon became one of the most distinguished lawyers in western New York. He continued to practice at Bath for several years; but in 1821, attracted by the many advantages which Rochester was then developing, he removed to that place, and continued there during the remainder of his life.

His reputation as a lawyer went before him, and he immediately entered into a large and flourishing practice. At this time he was fifty-five years old, in the plenitude of his mental powers, with a constitu-

tion naturally strong and vigorous, unimpaired by any excesses in youth, or manhood; he was well prepared for the scene of activity and labor which now lay before him. His untiring industry, his deep and philosophic research, his singular accuracy, his vigorous grasp of analysis, his clearness and force of conception, need no other comment or proof, than his early and continued eminence in a profession, which offers no prize to genius unaccompanied by application, and whose treasures are locked up in books, which hold out no attraction to imagination or taste, and which can only interest a mind disposed to patient and intense exertion.

General Matthews represented Monroe county in the Legislature of 1826. That body, was one of the ablest ever convened in the State. Samuel Young, of Saratoga, was Speaker, and, perhaps, no man ever discharged the duties of that conspicuous office with more ability, dignity, and brilliancy, than did this distinguished personage. He was an accomplished scholar, a close, learned, and accurate lawyer, a skillful, eloquent, and persuasive debater, a vigorous and eloquent writer; at once the sword, the shield, and ornament of his party. Among the many works which he has left, none have distinguished him more than his celebrated report on internal improvements, submitted by him to the Senate of this State in 1839, as Chairman of the Committee on Finance. This report is distinguished not only for the grace, beauty, and eloquence of its diction, but for its bitter and sarcastic attack upon the various schemes of internal improvements, then extant in the State.

Between Colonel Young and Mr. Mathews there existed a warm personal friendship, although they at times differed in politics. The office of District-Attorney being about to become vacant in Monroe County, by the expiration of the official term of Timothy Child, General Mathews was solicited to accept that office, and in 1831, received his appointment.

He discharged the duties of this office with all the fidelity, skill and ability which the public expected from a man of his learning and experience at the bar.

After holding this position about two years, he resigned, in consequence of the large increase of his civil business. This was the last public position which he ever held. Vincent Mathews never was a politician. His taste did not lead him into the devious paths of politics. His attachment to principle, his undeviating love of religion, protected him from the deteriorating influence of public station and the rage of parties.

Passion for the political arena is, undoubtedly, one of the great evils of the age. It calls out hosts of contestants for a few places, and encourages a bold and unblushing impudence in pursuit of personal elevation, by men of little capacity to discharge the duties of the places they seek. It opens a theater where little great men assume the habiliments of superiority, and mount some "bad eminence" for a brief period, only to be pushed into oblivion by some struggler beneath, who, in his turn, perches upon the slippery pedestal to meet the doom of his predecessor. Who can wonder that a mind like that of General Mathews should turn in disgust from such scenes?

He continued to discharge the duties of his profession, until he became the oldest practicing lawyer in western New York, having practiced fifty-five years without interruption, excepting his official terms. He died on the 26th day of September, 1846, in the eightieth year of his age; "continuing warm in his attachment to his profession, and industrious in the research and study it demands, up to the very last, ceasing his labors only with his life."

His sagacious, profound and philosophical mind found in the science of law an intellectual aliment, which sustained and invigorated his mental powers,

rendering them bright and active at a very advanced age.

He was not what might be termed an eloquent man, not even a fluent speaker, and yet courts and juries ever listened to him with profound attention. His manner, as a speaker, was unassuming, his language unvarnished, devoid of tropes and figures; but, like St. Paul, when he "stretched forth the hand" to speak, he often persuaded many a modern Agrippa to agree with him.

In his practice he was open, bold and liberal—a legal gladiator—wielding a keen, polished and powerful blade, but never the secret dagger. His deep abhorrence of guilt rendered him a powerful prosecutor, but not a strong defender, unless he believed in the innocence of his client. Before undertaking the defense of the accused, he always exhausted every effort to ascertain whether he was really guilty.

The following circumstance illustrates the keenness with which he tested clients charged with crime: A man who was accused of murdering his wife, sought to retain Mr. M. as his counsel. "The circumstances are against you," said the lawyer, "and I dislike very much to undertake your defense; but if I believed you innocent, I would not hesitate." The man asserted his innocence with great vehemence, but his words did not quite convince the sagacious counselor.

"I have two ways of defending a man charged with crime. If I think him innocent, I trust very much to that, and the difficulty of fabricating evidence that will convict. But, if I think him guilty, if I undertake his case at all, I make every effort in my power, and leave nothing undone which may tend to save him. Now, sir, which course shall I pursue in your case?" said General Mathews, fixing his eye keenly upon the man.

"I—I—think that you had better not leave anything undone," said he.

This was sufficient; the man found other counsel.

Such was the confidence of the profession in Mr. Mathews' knowledge of the law, that a large part of his practice consisted in preparing written opinions on important questions of law. These opinions were known to be the result of great mental action, of much research, and of large liberal thinking.

He once received a letter from a very young lawyer residing in a country town, asking his opinion on a question which the young man wished solved. The letter did not contain the usual fee; but it concluded in these words:

"If you will send me your opinion on this question, I will in return send you mine on any legal question upon which you shall desire it."

After reading the letter, turning to his partner, he said:

"See here, we shall soon have an opinion; an opinion, sir," and then, much amused, read the letter aloud, after which, he sat down, prepared an excellent opinion, and sent it to the young man, thanking him for his offer of assistance.

He was distinguished for his domestic and social qualities. His own fireside was to him the dearest place on earth. As a husband and father, he was tender, considerate and indulgent. His conversation was of the most agreeable kind; and intellectual men and women grew more intellectual in his society. He possessed the rare faculty of eliciting the strong points in the person's character with whom he conversed. Years did not dim the sunlight of his social and mental powers, or detract anything from the suavity of his manners.

As old age came upon him, it brought no asperities to his disposition, no irascibility to his nature. It seemed rather to temper his mind, "just as the soft atmosphere of declining summer communicates its own tender tranquility to every object and scene viewed

through it." For many years he was one of the wardens of St. Luke's Church, Rochester.

General Mathews was, in every sense of the word, a pious man. His piety was a deep sentiment. "It was warm, but not heated; earnest, but tranquil; a principle, not an impulse; the air which he breathed, not a tempestuous blast, giving occasional violence to his emotions." His heart was ever warmed by a sacred fire from above, and in all the trials of life he was sustained by a firm reliance upon Him to whom "all hearts are open, all desires known," and hence the approach of death had no terrors for him.

> "Like a shadow thrown
> Softly and sweetly from a passing cloud,
> Death fell upon him."

A distinguished lawyer, still a resident of Rochester, and once the law partner of Mr. Mathews, relates a touching incident which occurred the night but one before he died. This gentleman watched with him until past midnight, during which time the venerable sufferer slept sweetly as an infant. Suddenly he awoke, and taking the hand of his friend, he said:

"I have had a pleasant sleep, and have dreamed of bright, good, joyous beings, but that was a dream. Come, talk to me, tell me about dear old Cooperstown, and of our friends there; tell me all about them."

This request was granted, and in the silence and stillness of night, beguiling its long vigils, the story of other days was repeated, the sanctuary of tender memories opened. The dying lawyer listened, and as the theme went on, his countenance glowed with pleasure, and his eyes flashed with pleasant radiance. Suddenly interrupting his friend, he desired him to call his daughter, who was peculiarly dear to him, and who loved and venerated him with all that beautiful affection which only a much loved daughter can feel for such a father.

"My daughter," said he, "Mr. Husband has been talking so kindly to me of our old friends, that I know you would enjoy hearing him; and so I have sent for you."

Fervently kissing his pallid lips she knelt by his bedside, and holding his thin emaciated hand in hers, the story was resumed, and thus an hour wore away. Death was hovering near. Angels were waiting to convey the earth worn pilgrim to eternal rest. The gifted soul, on the verge of eternity, turning its last look on all it was leaving here, the aged face illumined by coming joys, the kneeling daughter, the cherished friend, bending tenderly over the bed of death, speaking words that brought up pleasant memoirs of the past, formed a group worthy the pencil of Raphael, the chisel of Phidias or Angelo. It was indeed

> The chamber where the good man meets his fate,
> Quite on the verge of heaven.

JOHN YOUNG.

Incidents in his Early Life.—His Parents.—Love of Knowledge.—Self-Taught in the Classics.—Becomes a Teacher.—Amusing Anecdote.—Vaulting Ambition Overleaping Itself.—Determined to Prepare for the Bar.—Commences his Legal Studies.—Supports Himself by Teaching.—Admitted to the Livingston Common Pleas.—Charles H. Carrol.—The Case of Miss Saterlie *v.* Windsor.—In Danger of a Disastrous Defeat.—A Successful Cross-examination and Brilliant Speech.—Saves his Client.—His Marriage.—His Early Politics.—Joins the Anti-Masons.—Elected to the Assembly.—Francis Granger.—William H. Maynard.—Two Future Governors in the Legislature of 1832.—His Speech in Opposition to Mr. Van Duzer.—Retires from the Legislature.—Devotes his Attention to his Profession.—The Case of the House Burners.—A. A. Bennett.—Mr. Young Nominated.—Elected to Congress.—His Congressional Career.—Retires from Congress.—Luther C. Peck.—Forms a Partnership with General Wood.—Again Nominated to the Assembly.—His Brilliant Legislative Career.—Becomes the Opponent of Horatio Seymour.—Great Debate Between Them.—Mr. Young as a Speaker.—Becomes the Leader of the Whigs in the State.—Returned to the Legislature.—Speech on the Mexican War.—Nominated for Governor.—His First Message.—High Reaching Buckingham Grows Circumspect.—His Administration.—Anecdote.—Appointed Assistant Treasurer.—His Death.—Reflections.

THE distinguished position which John Young occupied at the bar as a legislator and statesman, renders his name conspicuous in the history of the State. "Bold, skillful, and determined, he gave character to the political party," which in the State of New York acknowledged him as its leader. He did more. When that party was defeated and prostrated in the great conflict of 1844, by his ability as a legislative debater and tactician, by his stirring speeches in popular assemblies, he reformed its broken columns, lifted its trailing banner, infused new courage into its despondent cohorts, and finally led it to victory. He is charged, and perhaps justly, with many faults,

mistakes, and errors, for at present his public career will be subjected to the lights and shadows of the political atmosphere through which it is viewed. Happily for such men, for society, for history, the traces of passion, of rivalry, collision, and jealousy wear away by the lapse of time, are often forgotten in the requiem for the dead.

John Young was born in the State of Vermont, on the twelfth day of June, 1802. His father was Thomas Young, who removed with his family to Conesus, Livingston county, when John was but eight years of age. He was an innkeeper by occupation, and in early life was distinguished for enterprise and industry, and always for his irreproachable and manly character. Mrs. Young, the mother of John, was a woman possessed of those sterling traits of character, those strong mental qualities and heroic virtues which distinguished many of the pioneer wives and mothers.

John was the youngest of three brothers. At an early age he began to develope a mind which gave his friends high hopes for his future success in life. His mother read with pleasure and profit works of gifted authors and accomplished schol ars. Thus she was qualified to exercise excellent taste and judgment in the selection of books for her boy. Accordingly, she placed in his hands productions which tended to enlarge and liberalize his mind. When but ten years of age he had read of Aristides the Just, of Themistocles, with his Spartan virtues, of Brutus, and of the mother of Gracchi. Greece and Rome rose before him, and his youthful mind was fired with the eloquence of Demosthenes, the oratory which sprang native and vigorous amid the factions and freedom of the accomplished Athenians.

In that early day, the Columbian Orator, and the English Reader, works compiled from the most elegant American and English writers, were the principal reading books used in schools. Mrs. Young encour-

aged her son to commit large portions of these works to memory, and then repeat them to her while she carefully corrected every error in pronunciation and period. This mental occupation was almost invaluable to him in forming his style of speaking and writing in after life.

The circumstances of his father did not admit of his receiving those advantages of education which his mind demanded. The only institution of learning to which he was admitted, was the common school of Conesus. But the growth of such a mind as John Young possessed, could not be retarded by the want of advantages. It grasped after knowledge, with the same intuition which causes the tendril buried in darkness, to lift itself into the pervading bright life-giving sunbeam. What could not be taught him in the Conesus school, he studied with success by his father's fireside, with no other tutor but self-reliance, energy, and perseverance. He purchased the best classical works of the day, and devoted himself to them with such untiring industry, that in his humble home, far from academic halls, he became an excellent classical scholar, uniting with his acquirements that practical knowledge which prepared him to enter the theatre of life, a successful actor; and without which, apparatus or books, teachers, criticism, ancient language, and general literature are of little moment.

Indeed, without practical learning, fancy and logic may please, but they cannot move men profoundly and permanently. It is the practical, which in a speaker or writer suggests ideas, gives facility and energy of expression. It prompts "the thoughts that breathe and the words that burn," it excites those mysterious combinations of speech and thought, which send the speaker's soul through his hearers, breathes new life into old and faded truths, and causes an instantaneous gush of thought and feeling in the mind of the auditor. The world is full of impracticable educated men, who, like the solitary Crusoe, on a distant

island, possess rich, solid bars of gold, but whose value is useless.

"Like certain chintzes, calicoes, and ginghams, they show finely in their first new gloss, but cannot stand the sun and rain, and assume a very sober aspect after washing day." But he who seeks knowledge as did John Young, cannot fail to be practicable, for his mind is kept lively and active by being compelled to exert his energies—by the stir of the world around him, which acts upon his intellect like an invigorating breeze blowing away all the dust and rubbish, keeping his faculties in a healthy tone, when, perhaps, they would become feeble under the regimen of recluse scholars, and dealers in mere erudition.

At a very early age Mr. Young was fully prepared for a teacher of common schools; and in that profession, he soon acquired a reputation which gave him the choice of the schools in Livingston county. He once related to a friend at Albany, after a triumphant legislative contest, the following circumstance in his life, while teaching:

"One winter, while I was teaching in the town of Livonia," said he, "my scholars accepted a challenge to meet a rival school at a spelling match. It was a great event in their lives—greater in mine, for I was their commander-in-chief, and the thought of defeat was like death to me; so I drilled my scholars in the spelling book, with untiring industry. The day of the contest came, and my pupils were victorious. The young men of the defeated school then challenged my boys to a wrestling match; the challenge was accepted, and the match immediately took place on the play grounds of the school, and my scholars won another victory. The exultation which I felt was only equaled by the triumph of my boys. I was Cæsar at Pharsalia, they my conquering troops. That would have been the proudest day of my life, had I not lost my laurels by accepting a challenge from my rival teacher, to decide the contest of the day by wrestling with him.

In the flush of two victories, I felt the strength of giants. But this contest ended by my being ingloriously thrown into, and covered up by a snow-bank, as a reward for my vaulting ambition, which in this case, surely overleaped itself. That day, however, was the epitome of the ambitions and struggles of life—one moment exultant with success, the next despondent with defeat."

At the age of twenty-one, Mr. Young entered the office of A. A. Bennett, Esq., then a prominent lawyer practicing at East Avon, New York.

In those days, a clerkship of seven years was required of law students, before they could be admitted to a class for examination, unless classical studies had been regularly pursued, under some competent teacher, or the candidate was in possession of a diploma from some college. As Mr. Young had no certificate of classical studies, from a competent teacher, and had no diploma, he was compelled to struggle through a seven years' clerkship. Unwilling to be an expense to his father, he sustained himself through several years of this term, by teaching. At length he was invited by Ambrose Bennett, Esq., a leading lawyer of the Livingston bar, residing at Geneseo, to enter his office as a student. The offer was accepted, and Mr. Young became a resident of Geneseo for life. Through the influence of Mr. Bennett, he was admitted to the Livingston Common Pleas, after studying four years. The late Charles H. Carrol was then first judge of that court.

He was a man of ability, dignified and winning in his manners, a gentleman of the old school. In early life a scholar, whose attainments were polished by intercourse with a highly cultivated and refined society, in his mature years a lover and patron of progressive agriculture, an amiable, high-minded and valuable citizen, a Christian gentleman, an honor and an ornament to the bench of Livingston county. The Common Pleas possessed original jurisdiction,

and was a tribunal in which important civil actions were commenced and tried; while it relieved the Circuit from a large amount of business, and led to a speedy termination of litigated suits, it also tended to a more strict and better education of lawyers in the trial of cases, than the loose, careless trials before referees, to which, owing to the crowded state of the Circuit calendars, the profession is now obliged to resort. After his admission to the Common Pleas, Mr. Young amply sustained himself by practicing in that court, and in the courts of justices of the peace. In these tribunals he evinced that legal ability, which subsequently led to the high distinction he attained at the bar.

In October, 1829, he was admitted to the Supreme Court, and at once entered into a practice which was lucrative and flattering to his professional ambition. He had been at the bar of the Supreme Court but a comparatively short time before he was conceded a high rank in the profession.

One of the early cases which greatly distinguished Mr. Young, was an action brought by a Miss Saterlie against Richard Windsor, for the breach of a marriage contract. Mr. Young conducted the action for the lady, and the late Judge Mullett appeared for the defendent. It was tried at Batavia. The defense admitted the promise and breach, but set up in defense of it, the unchaste and impure conduct of the lady after the engagement. Both parties belonged to influential families, who occupied high social positions, and as may well be supposed such an issue engendered the most bitter feelings. A large number of witnesses were examined, and the defendant succeeded in establishing by the testimony of a young man, the truth of the matters set up against the lady. There were other witnesses whose testimony tended to show corrupt conduct on her part. This brought the trial to a fearful point; for the plaintiff and her friends to be defeated in such a case,

would be ruin to her, and disgrace to them; and as the case stood when Mr. Mullett closed the examination of the young man, there seemed little hope for her. But on the cross examination, Mr. Young succeeded in drawing from the witness the fact that he was a discarded suitor of the lady, and that he had on one or two occasions, made certain threats, which exhibited his desire for revenge. The counsel also succeeded in entangling him in the second relation of his story, to such an extent, that it had the appearance of improbability. But after all, when the evidence closed, the case had an unpleasant appearance for the plaintiff.

Judge Mullett made a strong and powerful effort for the defense. It combined the eloquence of reason, of sympathy and passion. It was such an effort as drew from Mr. Burke his celebrated and beautiful panegyric on the eloquence of Sheridan, when those brilliant orators were opposed to each other on a State trial.

Mr. Young saw the effect which Mr. Mullett's address had on the jury, and he prepared himself to overcome it. He commenced by extolling the speech of his adversary in the highest terms. "In the language of another," said he, "my antagonist has used every species of rhetoric, every kind of eloquence. Whatever the acuteness of the bar, the solidity of the judgment seat, and the sacred morality of the pulpit, have hitherto furnished, nothing has equaled what we have heard to-day in this court room. But, gentlemen, my opponent is entitled to still higher credit.

"With no reliable evidence to sustain him in the defense of this man, he has invented a theory, which in less powerful hands, would have been but the stuff which dreams are made of, but filtered through his fine brain, it assumes something like reality. It will therefore be my duty to dissect this theory, and to ascertain what evidence there is in the case to sus-

tain it; and then to see what facts there are to warrant a verdict for this deeply injured young lady; for you are the unfettered, unlimited, and final judges of that question, and of the amount of damages you may think proper to give. Gentlemen, you have, thank God, a still higher power and duty—the power to examine and decide upon the credibility of the witnesses who have testified in this case, according to your best knowledge and observation;—in the light of experience and according to the laws of human actions and frailty. Exercise that power, gentlemen, sternly and impartially in this case (for I tell you there is perjury here) with the conviction that the eye of God is upon you, and my client is saved."

Mr. Young then took up the case, and his effort was characterized by such power of mind, that it rendered him the peer of Williams, and Ogden Hoffman, as a jury lawyer.

The jury returned a very heavy verdict for the lady. A motion was made by the indefatigable Mullett for a new trial, which was denied by the court.

In the spring of 1833, Mr. Young was married to Miss Ellen Harris, an accomplished daughter of the late Campbell Harris, of York, Livingston county.

Early in life he was attracted to the political field. On attaining his majority, his preference directed him to the Democratic party. In the autumn of 1828, the Democrats of Livingston county nominated him for County Clerk. His opponent was the late Chauncey Bond, of Geneseo. During this canvass he ardently supported General Jackson for President, and such was his enthusiasm for "the old Hero" that he lost all interest in his own election. His party being in the minority in the county, he was, of course, defeated.

Some time previous to this election the abduction of William Morgan took place, and the anti-Masonic party sprang into a powerful existence. Mr. Young condemned the high-handed act of Morgan's taking-

off, and shared in the general indignation which it created. His attachment to General Jackson prevented him from uniting his fortunes with the Anti-Masons. But in the fall of 1829 he identified himself with them, and adhered to their fortunes, through all their changes and vicissitudes, until they united with the old National Republicans and formed the Whig party.

In the fall of 1832, Mr. Young and George W. Patterson were elected members of Assembly from Livingston county. They took their seats in that body January 6th, 1833. The Anti-Masonic party in the Assembly was then led by Francis Granger, of Canandaigua, and in the Senate by William H. Maynard, of Utica.

Mr. Granger was distinguished by many splendid and showy attributes of mind and person, possessing those qualities which constitute a successful parliamentary leader. He had already represented the County of Ontario, with marked ability, in four successive legislative sessions. Subsequently, he was the candidate of his party for governor. For a long time he exerted an extensive influence in the politics of the State.

Mr. Maynard was the great intellectual light of the Senate—the Halifax of his party. As a lawyer, he was distinguished for the profundity of his learning, —the result of his industry. Accustomed to the long patient vigils of the scholar, and the ardent study of political philosophy, he was logical and exact.

In the different branches of the Legislature of 1832, two future governors of the State occupied seats; one of whom was William H. Seward, and the other John Young. The former was elevated from the gubernatorial chair to the Senate of the United States, and from thence to be prime minister of two presidential administrations. Both of these gentlemen, in 1833, were overshadowed by the talents, position and influence of Maynard and Granger. The

early death of the former opened a field for the splendid and powerful abilities of Mr. Seward, while the mental resources of John Young in the political arena, gradually removed all opposition in his way, and he grasped the highest honors in the Empire State.

In the Legislature of 1833, Mr. Young occasionally took part in the debates. Whenever he arose to address the House, he commanded respect and attention. His speech delivered in opposition to a resolution declaring that the charter of the United States Bank ought not to be renewed, exhibited a profound knowledge of the fiscal affairs of the nation, and gained him considerable reputation.

His speech in opposition to the bill introduced into the Assembly by Mr. Van Duzer, of Orange, increasing the salary of judicial officers, brought upon him the hostility of those interested in its passage, some of whom took measures for retaliation, which led to a singular and sharp contest. His ardent support of the Chenango Canal bill gained him many friends interested in that measure.

After retiring from the Assembly in the spring of 1833, he was not in the political field again for several years, preferring the solid honors of his profession to the precarious position and evanescent success of the politician, who to-day is lifted to the Pisga of his party, and to-morrow lies by the cold streams of Babylon, with none so poor as to do him reverence; or who, like the giant in the beautiful fable of Sisyphus, is fated to an eternal renovation of hope and disappointment.

Early in the year 1836, A. A. Bennett, Esq., then a resident of Lima, N. Y., was appointed District-Attorney of Livingston county. He was a powerful and indefatigable public prosecutor, and stood high at the bar. Soon after entering upon the duties of his office, several persons were indicted for the crime of arson, committed in one of the northern towns of the

county. The circumstances of the case created great public indignation and considerable excitement. Some of the persons who were charged were farmers, and men of good reputation. Mr. Young was retained for the defendants; the ability with which he conducted the defense will not soon be forgotten in the County of Livingston. The defendants were all discharged.

He possessed a polished sarcasm, but it was a weapon which he seldom wielded.

Mr. Bennett had the more original fancy,—a deeper pathos; though Mr. Young was no stranger to the pathetic; while he could follow an argument with a more sustained acuteness.

In the fall of 1836, Mr. Young was nominated by the Whigs of the thirtieth Congressional district as a candidate for member of Congress, to fill the vacancy occasioned by the resignation of Philo T. Fuller. He was elected, and took his seat in the twenty-fourth Congress, December 4, 1836. After retiring from that body, he returned to the duties of his profession, declining a re-nomination.

Luther C. Peck, then a resident of Pike, Allegany county, was nominated and elected a member of the twenty-fifth Congress. Mr. Peck was a member of the House of Representatives from his district four years, serving with distinguished ability, and leaving upon the record of its proceedings the indubitable evidence of his high capacity as a legislator and lawyer, as an orator and debater.

In the memorable contest of 1840, Mr. Young was, at the solicitation of the leaders of the Whig party in his Congressional district, again before the people as an aspirant for Congress. He was triumphantly elected, and on the 31st of May, 1841, took his seat as a member of the twenty-seventh Congress, at the extra session called by Mr. Tyler. This session continued until the 13th day of September, following. It again assembled on the 6th of December, 1841, and

adjourned on the 30th of August, 1842. It re-assembled on the 5th of December, 1842, and continued its session until March 3, 1843. This was Mr. Young's last service in the National Legislature. While in Congress he distinguished himself more by his labors in the committee room, and by his sagacious advice in regard to the movement and policy of the Whig party, than by the number and ability of his speeches. The Bank bills vetoed by Mr. Tyler,—the distribution of the proceeds of the public lands,—the tariff of 1842,—were the great questions of the day, and he participated in the discussion of them with an ability which reflected honor upon his party and his district.

On his return home from this Congress, he was publicly received by his friends, and partook of a public dinner at Geneseo. A large number of leading politicians of Livingston and Allegany counties were present. In a short address he alluded to the policy of Mr. Tyler, which evinced the disquiet he felt for the course pursued by him. "A short time ago," said he, "the country resounded with shouts for Tip and Tyler; but the scene is changed."

Mr. Young, having formed a copartnership with his brother-in-law, General James Wood, Jr., of Geneseo, in company with that gentleman, he again returned to the practice of law. Such was their success, that Young & Wood became a leading law firm in western New York. It existed until after the senior partner was elected governor of the State. Since that event, General Wood has continued in practice, attaining a high and honorable position at the bar. During the recent civil war, as colonel of the renowned One hundred and thirty-sixth New York volunteers, he proved himself a gallant soldier. For his meritorious services, and bravery on the field, he was promoted to the rank of brigadier-general, serving until the war closed.

In the autumn of 1844, the Whigs of Livingston county again summoned Mr. Young from the duties

of his profession, and he was induced to accept the nomination for member of Assembly. His election was a matter of course. The powers of John Young as an orator and legislator, were never fully developed, until he entered the Legislature of 1845. Here he raised himself to an eminence, seldom attained in a legislative body, and from which he easily reached the executive chair, though compelled to contend with the ablest intellects of the State. Horatio Seymour was a member of that Legislature, and as the Democrats were in the ascendancy, he was elected speaker. Mr. Seymour was then attaining that brilliant reputation which has placed him among the most distinguished men of the nation.

In the year 1845, the most popular measure with the people of the State of New York, was the proposed convention for the amendment of the Constitution. It was claimed with much propriety, that there were many corruptions and abuses existing in the State, which would be eradicated by a convention, and the people, therefore, eagerly demanded the passage of a bill providing for this measure.

In the Legislature of that year the Democrats were divided into Radical and Conservative Democrat factions, which subsequently resulted in the great schism of Hunker and Barnburner. Between these factions, the Whigs held the balance of power. Mr. Young, who early understood the great popularity of the proposed convention, adopted that measure as a party policy, which he saw would lead to success. With one or two exceptions, the Whig members coincided with him. Under his lead and direction, no means were left untried which promised to widen the breach in the Democratic party in the House. His management was admirable and successful.

The Radicals had long been in favor of the proposed amendment to the Constitution, but did not desire a convention, while the Conservatives were in fact opposed to either convention or amendment.

When the question came before the Assembly, the Whigs voted against the proposed amendment, thus compelling the Radicals to insist upon a convention rather than encounter the unpopularity of opposing it. The bill for the convention could not pass without the assent of the Whigs, who, of course, would not consent to the passage of any measure which did not tend to strengthen them in the State. And thus the question of a convention was, for a long time, one of absorbing interest in this Legislature, leading to frequent and exciting debates, which brought Mr. Seymour and Mr. Young in collision; the discussion which took place between them has rarely been equaled for eloquence or ability, at least in the Legislature of New York.

It drew to the Capitol crowds of deeply interested people, creating as much interest at Albany, as did the great Senatorial debate between Webster and Hayne at Washington. Each was a chieftain of his party, and each contended for a prize, well worthy the ambition of such contestants. Both won distintinguished honors, and it is not invidious to say, that Mr. Young in this debate placed himself among the great parliamentary orators of the State. In one of his speeches, he alluded to Mr. Seymour in the following language:

"I have a single word to say of him. There is much of him to cultivate for good. He has shown himself the possessor of high, commanding, brilliant talents, and if he would forget party, and turn aside his passion for power, and the narrow paths of party discipline, and tactics,—tear away the drapery he has thrown around himself, and stand out his own living self, breathing out the purposes of his own great and generous heart; I hope, I trust, I shall live to see him occupying the highest station which his ambition desires." Mr. Seymour's reply was equally happy, and his retort to the charge made against him by Mr.

Young, of love of party and party tactics, was keen and pointed.

In his speeches at the bar, in the Legislature, or in the popular assembly, Mr. Young usually avoided anything like an exordium, and endeavored to lead his audience by the shortest and most direct course to the real point under discussion. In no instance did he permit himself to make a lengthy effort. Hence his arguments were like a short polished and keen weapon, used with intensified force and power.

The convention bill finally passed the Assembly, on the twenty-second of April, 1845. The Senate concurred; it received the signature of Governor Wright and became a law. The passage of this bill was an auspicious day for John Young. It was the successful consummation of a policy which would have added lustre to the laurels of Pitt, Fox, Clay, or Webster. It did not aggrandize himself alone, but in the next gubernatorial election it tended largely to the success of the Whig party in the State.

In the fall of 1845, Mr. Young was returned to the Assembly. The Legislature of 1846, like its predecessor, contained some of the most eminent men in the State. Mr. Young was the Whig candidate for speaker, but as his party was in the minority, he was defeated, and W. C. Crain, of Herkimer, elected.

This session was not an important one, excepting as it served to keep alive those divisions in the Democratic party, which at a later period developed themselves into an open and fatal rupture.

Just as the Legislature was on the point of adjourning *sine die*, the intelligence reached Albany, that a collision had taken place between the forces of the United States and the Mexicans on the Rio Grande. On the introduction of a bill into the Assembly authorizing the governor to sustain the nation with men and arms, Mr. Young, in an eloquent speech, declared his intention to sustain the resolution, concluding in the following memorable language:

"The country is invaded, the rights of our citizens have been trampled upon, and I will sustain the country, right or wrong."

These remarks were the subject of much comment and considerable censure. But as has been well said, "Mr. Young never regretted the utterance of them, and construed in the spirit in which they were uttered, as indicating the duty of the good citizen, to waive his individual opinion, when called upon by the action of government to support it against a foreign power—it is so near akin to patriotism, that it must find a response in the heart of every one who loves his country." The great patriot who uttered the words, "Our country first, our country last, our country always," was inspired by the same sentiment which prompted those celebrated words of Mr. Young.

In the Legislature of 1846, Mr. Young voted for the law abolishing distress for rent, and he unreservedly declared his willingness to afford the anti-renters such aid and protection as the Constitution vouchsafed to them. He even asserted his willingness to amend the Constitution to protect them still further, and indorsed the changes made in their favor in the convention of 1846.

Such was now the popularity of Mr. Young in the State, that in 1846, he became a prominent candidate of the Whigs for governor. Mr. Fillmore had been urged as a candidate, but it was well known that he did not desire the position.

On the twenty-third of September, 1846, the Whig State convention assembled in Utica. It was the scene of a singular, and what might be termed a three-cornered contest. The defections which subsequently dissolved that great party, here distinctly exhibited themselves, under the names of Conservative and Radical Whigs, or Silver Gray and Wooly Heads. The former were lead in the State by Mr. Fillmore, Luther Bradish, and John A. Collier; the latter by Mr. Seward, Mr. Weed, and others. There was also a

strong anti-rent element in the convention, the leader of which was Ira Harris.

Although the name of Mr. Fillmore was presented to the convention against his wishes, yet such was his great popularity that he was a powerful competitor. Mr. Young was the Radical candidate, and although there was no personal friendship between him and Mr. Seward, yet on this anti-rent question they agreed, and as the Radical leaders preferred Mr. Young to Mr. Harris, they strongly sustained the former. After balloting for a long time, the anti-renters yielded their preference for Mr. Harris. Mr. Young received the nomination for governor, and Hamilton Fish was nominated for lieutenant-governor. The Democrats renominated Silas Wright and Addison Gardiner. With such powerful candidates they were confident of success. The election resulted in the success of Mr. Young by eleven thousand majority, and in the defeat of Mr. Fish; the Democrats elected Mr. Gardiner, lieutenant-governor.

Mr. Young entered on the duties of his administration. His first message was distinguished for conciseness and brevity, yet it was regarded as a dignified and able State paper. On the question of the Mexican war, he reiterated the sentiments of his speech on that subject in the Legislature of 1846. It is said that before this message was sent to the Legislature, he submitted it to certain eminent Whigs, who strongly urged him to expunge that part of it which referred to the war; but he was inflexible, and it was read to the Legislature without amendment in that respect. The measures which it recommended met the approbation of the Whigs; while they were condemned only by the most violent and bitter Democrats. In his second annual message, he alluded to the Mexican war in much the same language as the former message.

During his administration the Legislature was principally engaged in preparing such laws as were

demanded by the new Constitution; and as that instrument had deprived the executive of nearly all the official patronage formerly attached to that office, he was relieved from the vast responsibility of his predecessors. In the appointment of the few officials which the new Constitution left to the governor, he declined the advice and counsel of leading Whigs who had hitherto had a controlling voice in these matters.

Soon after assuming the duties of his office, two leading Whigs called upon him for the purpose of influencing him on the question of executive appointment.

"Gentlemen," said he, after listening to their statements, "allow me to inform you that I am the governor of the State of New York."

"Are we to understand that you decline to listen to our suggestions in this matter?"

"Certainly," was the reply.

They withdrew.

"High-reaching Buckingham is growing circumspect," said one of them, as they descended the steps which led from the executive mansion.

"Yes," replied the other, "and his circumspection will send him to private life."

Among the first acts of his administration was the pardoning several anti-renters, who had been convicted and imprisoned during the administration of Governor Wright. In this act he incurred the displeasure of the Conservative wing of the Whig party, and the usual criticism and newspaper condemnations followed, which had the effect of strengthening his friends as well as his enemies, and thereby leaving the matter about equally balanced. The governor insisted that the offense of the convicts was merely political, and therefore called for the interposition of the pardoning power.

In the early part of his administration, the question of the extension of slavery to the territory to be

acquired from Mexico, began to be agitated; and sanctioned by him resolutions were adopted in the Legislature instructing the Senators and Representatives from this State in Congress, to vote for the prohibition of slavery in such territory, thus evincing his views on a question, the settlement of which, subsequently, led to such a fearful arbitrament.

"His views with regard to the war with Mexico, his refusal to make his appointments in accordance with the wishes of Mr. Seward and his friends, were not satisfactory to one branch of the Whig party, and led to considerable feeling, though no open rupture took place. He did not desire a renomination; consequently the harmony of the party was not disturbed by any considerations merely personal to himself," though the feud between the Wooly Heads and the Silver Grays continued until the great Whig party became a thing of the past.

The popular manners of Governor Young, his entire freedom from all affected dignity and self-importance, the perfect ease with which he received all those who approached him, his possession of those traits which command respect, rendered him personally popular. In his character there was a lively vein of wit and humor, which in public or private life rendered him attractive; and he knew how to pass "from grave to gay, from lively to severe," with a facility rarely met.

Among the amusing incidents of his gubernatorial life, which he sometimes related with infinite relish, was the following:

One morning, while busily engaged in his room, a person was announced as Mr. ———, from Livingston county. The governor did not recognize the name, but, coming from Livingston county, he was admitted; and a tall, gaunt, queer, but somewhat self-possessed individual entered the room.

"Good-morning, Mr.—I beg pardon—Governor

Young; glad to see you; how's your health now, and your family?" said the man.

"Good morning, sir," said the governor, looking very inquisitively at the queer specimen before him.

"You don't know me, I see. Well, governor, I'm the chap you saved from State prison for being mixed up in that confounded affair about the buildings going up one night. My gracious! what a speech you made for me. The way you bored for water was awful. I felt bad, but I didn't cry until after the jury did. You got me off slick as grease. Hard work; got good pay, though, and"——

"My good friend," said the governor, interrupting him, "I am glad that you remember my services in your behalf; but as I am in great haste, you must excuse me now."

"But, Governor, this is a business call, and business is business," said the fellow.

"Well, what is your business?" said Mr. Young, growing impatient.

"Well, you see, I'm in for it again—I'm indicted for another affair, a little worse than the first one; pretty sure to go up unless I have help; and as I'm out on bail, I've come to you again to assist me;—always stick to those that do well by me," said the fellow.

"But I am not practicing law now, and I cannot help you," said the governor.

"I understand, but you see as you lay over all the judges in the State now, and I am going to stand a conviction, cause I can't help it, I 'spose; and the judge will send me to State prison, and now, Governor, the joke comes in; when I am fairly in (I shan't mind that), you just come down with your pardon, and lay out that judge, and set the district-attorney whizzing. Don't you see, Mr.—I beg pardon, Governor—that you can save me this time a good deal easier than you did before, and I guess for less

money, but don't wait long with your pardon," said the fellow.

Mr. Young, greatly amused at the man's sincerity and pertinacity, assured him, that if he was convicted, he would look over the evidence, and see how the case appeared, and then he dismissed his visitor.

In the Whig National Convention of 1848, Mr. Young was a warm friend of General Taylor, but the distinguished public services, captivating and profound qualities of Mr. Clay, caused him to prefer that great statesman for president; and when, in 1849, Governor Young desired to be appointed assistant treasurer in the city of New York, a position then held by ex-Governor Bouck, he was opposed by the leaders of the Radical Whigs, his preference for Mr. Clay to General Taylor being made as a reason why he should not be appointed to any office under the new administration. But the man who had been so long familiar with the detail of politics, and who understood so well the intrigues of cabinets, was a match for his powerful opponents; and in July, 1849, he was appointed to the important office he sought. This was the last public station he ever occupied. He died in the city of New York in April, 1852, in the fiftieth year of his age.

Mrs. Young and four children survive him. The former resides at Geneseo, N. Y., respected and esteemed for many distinguishing virtues and amiable traits of character.

Thus we have seen John Young, the artificer of his own fortune, the solitary and humble student, the teacher, lawyer, legislator, and, finally, governor of the Empire State. Often eulogized and vituperated, but in all these phases of his life successful. At times displaying powers of oratory of which he seemed unconscious, and exhibiting legislative abilities that made him the brilliant leader of his party, the chieftain who restored its fallen fortunes; and if he was hated by many, he was admired by more.

As governor, his administration may not be celebrated for any striking policy, nor may it dazzle us by brilliant contrasts between its good and bad qualities; between the vicisitudes of prosperous and adverse policies; but apart from the censure of its enemies, and the commendations of its friends, the impartial historian will accord to it as much ability and eminence as had been awarded to the administrations of most of his predecessors. As has been well said, "the light which radiates from the life of a great and patriotic statesman is often dimmed by the mists which party conflict throws around it. But the blast which strikes him down, purifies the atmosphere which surrounded him in life, and it shines forth in bright examples and well earned renown.

GEORGE HOSMER.

His Ancestry.—A Son of Dr. Timothy Hosmer.—Oliver Phelps.—Description of Western New York in Early Days.—First Court in Ontario County.—The Lawyers in Attendance.—The Trial.—Amusing Charge of Judge Timothy Hosmer to the Jury.—Highly Gratifying to the Ladies.—George Hosmer's Early Education.—Preparation for the Bar.—Admitted to Practice.—Opens Law Office at Avon.—Moses Hayden.—Hosmer Appointed District-Attorney.—Successful Practice of the Young Advocate.—Engaged in a Great Murder Trial at Batavia.—Defends the Murderers.—Singular Verdict.—Uncertainty of the Jury System.—Remarks of Luther C. Peck Concerning Petit Jurors.—Mr. Hosmer as an Advocate and Speaker.—Singular Defense of a Young Girl at Batavia.—Retained for the Plaintiff in the Great Case of Pratt *v.* Price.—John C. Spencer Opposed.—Speech of Mr. Hosmer.—Charles M. Lee.—John Dickson.—Judge Gardner.—His Character.—Hosmer Engaged in the Morgan Trials.—Defends Roberts, Editor of the Craftsman.—Hosmer's Speech to the Jury on Behalf of a Very Poor Client.—Money in the Jury Box.—Elected to the Legislature.—His Career in the Assembly.—Characteristics.—Death.

THE name of George Hosmer was for many years identified with the legal interests of western New York, and his career at the bar has passed into its history. He was a lawyer of eminent abilities, possessing many solid and shining acquirements, a mind naturally strong and comprehensive, improved by the usual classical studies, a critical acquaintance with English *belles lettres*, and a laborious and systematic study of the common and statute law. Hence, the high position which he attained in his profession was the legitimate and proper reward of real merit, of untiring industry, diligent research, and not the result of any adventitious circumstances. The wreath which he wore was not won in contests with plebeian competitors, for it was his fortune to commence and continue his professional struggles with those gigantic intellects which composed the bar of western New

York; noble and generous rivals, who yielded him with cheerfulness and pride the honors he had achieved.

George Hosmer was born in Farmington, Conn., August 30th, 1781. He was a descendant of Colonel Thomas Hosmer, of Hawkworth, England, a strong and vigorous supporter of Cromwell; sustaining him with undaunted valor in the field, and aiding in those deep laid ambitious schemes which elevated that singular man to the position of lord protector of England, and upholding the protectorate with all his power and influence. When at length the sun of Cromwell descended forever, and Charles II. returned "to his own again," Colonel Hosmer, with the fugitive regicides, Goff, Walley and Dixwell, was compelled to leave England and secure an asylum from royal vengeance in the wilds of New England. He settled at Middletown, Connecticut.

George was a nephew of Hon. Titus Hosmer, of Middletown, a distinguished scholar, statesman, judge and lawyer. The elegant poem or elegy on his death, written by the pen of Joel Barlow, will long be remembered as a beautiful and scholarly production. The father of the subject of this sketch was Timothy Hosmer, one of the earliest settlers of Ontario county, a man of liberal education, a physician by profession, and a true gentleman of the old school.

At the commencement of the revolutionary war, he entered the Continental army as surgeon of a Connecticut regiment, in which capacity he served during the war, with the exception of two years, during which time he served as surgeon on the staff of Washington. He was present at the battles of Monmouth, White Plains, Brandywine, Princeton and Trenton. At the execution of Andre he was one of the attending surgeons, and no event which he witnessed during the progress of the whole war made so deep and lasting an impression on his mind as did the death of that elegant and accomplished soldier. In after

years, while relating the circumstances of this execution, he was "often beguiled of his tears."

In October, 1798, he was appointed by Governor George Clinton, first judge of Ontario county. Oliver Phelps, with whom he came to western New York, had previously been appointed to that office, but such was the condition of the county that no courts were held or organized by Judge Phelps, and his many important business relations compelled him to resign, and Dr. Hosmer was appointed in his place. Mr. Phelps was a native of Windsor, Connecticut, and with Nathaniel Gorham was one of the earliest landholders in the then far off Genesee country. He was active, high-minded, enterprising and intelligent. When he first visited western New York, that now highly cultivated and splendid section of the State was an unbroken wilderness, save the few settlements or openings made by the Indians. But the sheen of its beautiful lakes and rivers, the legendary hunting grounds of the red man, and the natural beauty of the country, had many charms for the intrepid pioneer, and as if by prophetic vision he saw something of its future greatness, though he could not realize that within a period of time less than a century it would attain a position in civilization, wealth and refinement equal to realms known in history for ages.

Mr. Phelps first visited Geneva, than called Kanedesaga, in the year 1788. In the spring of 1789, under his auspices, a large company from Connecticut and Massachusetts commenced a settlement in the country of the Genesee; after encountering many hardships and adjusting many difficulties with rival companies and the Indians, a settlement was permanently commenced. Canandaigua, or Canadargua, as it was first called, was the headquarters of Mr. Phelps. The beautiful location of that village, or trading post as it was then, had been previously described by tourists and adventurers who had occasionally found their

way to this distant country. As early as 1765, a traveler by the name of Kirtland, visited Kanadesaga, or Geneva, and in a letter to Sir William Johnson, under whose auspices the journey was undertaken, he bitterly complained of the fare he found.

"Could I have plenty of fresh venison and bear's flesh," he said, "I could do without bread, ye staff of life; but to have little of either, and ye most part of it rotten, I think may be called coarse food."

In another part of this letter, he says he finds "nothing but ye Indians here." And this only a hundred and four years ago.

Soon after the settlements under Phelps and Gorham were commenced, several distinguished tourists from the Atlantic cities and from Europe, visited western New York, and the poetic description which they gave of the country attracted great attention. *The Gentleman's Magazine*, a well known quarterly of much literary merit, then published in London, contains a letter written from Geneva in 1790, by a young nobleman, who made the tour of "these western wilds," as he called the country.

"The scenery about Kanadesaga," he says, "is beautiful and as enchanting as any Italian landscape, or the shores of classic seas, while the whole country about Canandaigua is as enchanting as the Vale of Tempe, and as beautiful as the garden of Hesperides. There are, however, but one or two families of whites at either place, to enjoy the Eden-like beauties of the situation."

The county of Ontario was set off from Montgomery in the year 1789, and included all the territory known as the Geneeee country, and now known as western New York. Mr. Phelps was elected to Congress from Ontario county in the year 1803. He served in that body two years. After retiring from Congress, he embarked in certain speculations, which resulted disastrously, and he became greatly embarrassed, notwithstanding that his wealth was once estimated at a mill-

ion dollars. He died at Canandaigua in the year 1803. The names of Oliver Phelps and Nathaniel Gorham are indelibly inscribed in the history of western New York; while their descendants are known among the most respectable and distinguished citizens of the State.

Judge Hosmer presided at the first county court ever held in Ontario county. His associates were Charles Williamson and Enos Boughton. This court was held at Nathaniel Sanborn's hotel, in Canandaigua, November, 1794. Among the lawyers present were Vincent Mathews, James Wadsworth, John Wickham, and Thomas Morris. There were several causes on the calendar, but no jury cases were tried—the principal business being the organization of the court. The next term was held in June, 1795. At this court, occurred the first jury trial which ever took place west of Herkimer county. It was the trial of a man indicted for stealing a cow-bell. The culprit was defended by Vincent Mathews and Peter B. Porter; while the prosecution was conducted by Nathaniel W. Howell, afterwards Judge Howell. The cause was tried with all the adherence to strict legal rules, with all the conformity to great principles of justice, which characterizes legal proceedings in the most gorgeous temple of justice, or under the domes where law, in scholastic robes, has been for ages dispensed. After a close, legal contest, and an able charge to the jury from Judge Hosmer, the prisoner was acquitted. The first Circuit Court, and Court of Oyer and Terminer, held west of Montgomery county, took place at Patterson's tavern, Geneva, June, 1793. John Sloss Hobert, one of the three justices of the Supreme Court, appointed after the organization of the judiciary in 1777, presided. A grand jury was impanneled and charged, but no indictments were found.

Judge Hosmer was not bred to the bar, yet his strong, practical, good sense, his finished education, extensive reading, his love of justice and equity, rendered him well qualified for his judicial position, and

his decisions were always acceptable to the bar and the public. The following anecdote illustrates his natural love of justice:

During one of the terms of his court, a woman was brought to the bar for trial, on an indictment charging her with a violent assault and battery upon a man by the name of Scrope. The evidence developed the fact, that Scrope had intruded himself into the kitchen of the lady, and grossly insulted her. Seizing an old fashioned splint broom, a formidable weapon, by the way, she drove him from the house, inflicting several very severe blows upon his head with the broom, which considerably injured him.

The district-attorney, having proved the assault and the injury resulting from it, rested his case, confident that the woman would be convicted. Her counsel seemed to take this view of the case, and made but little effort to save her. Then came the charge of the judge; he was, as we have seen, a gentleman of the olden time, too refined and chivalrous to see a lady convicted under such circumstances; especially as he believed the acts of the complainant were a perfect justification for the assault.

"Gentlemen of the jury," said he, "the evidence in this case, clearly shows that an assault and battery has been committed upon this man, and unless there is some justification for the assault, you must convict the defendant. But, gentlemen, in my view, there are extenuating circumstances in the case, which you must take into consideration. Among which, are the sex of the defendant, the place where the assault was committed, and the circumstances which led to the assault. Gentlemen, bear in mind that the kitchen is a woman's empire, the broomstick a legalized, and therefore legitimate weapon, her honor the corner-stone of society, nay, its superstructure. The wretch who invades her empire and there wantonly insults her, should never complain if quick, heavy, repeated blows given with her proper weapon should in fury descend upon

his head. If he escapes with his life, he should make no other demonstration than thanking God for it. But when he goes further, when, as in this case, he asks redress from a jury; if there is a juror in the box who has a wife, mother, daughter, sister, or female friend of any kind, that cannot see in the provocation a justification of this act, and of the whole act, his name ought to be stricken from the jury box forever. Go out, gentlemen, and return with such a verdict as will not, when you go to your homes, bring upon you the condemnation of every virtuous woman."

This charge, although not entirely balanced by strict legal rules, rendered the judge very popular, especially with the ladies.

Having finished his classical education, George Hosmer entered the office of Hon. Nathaniel W. Howell, of Canandaigua, as a student at law. Judge Howell was then a prominent lawyer and jurist, whose life appears in another part of these sketches. Mr. Hosmer continued with Judge H. until he completed his legal studies, when he was duly admitted to the bar. He commenced practice at Canandaigua.

The first cause in which he was engaged, was tried before his father, who, during the trial, frequently forgetting the dignity which his son had acquired, would frequently say to him, "George, you are wrong;" "George, see here, you misapprehend the point;" and as the young lawyer became somewhat persistent, "George, sit down," said the judge, and he was obeyed.

After practicing at Canandaigua until the year 1808, Mr. Hosmer moved to Avon, opened an office, and commenced practice at that place, meeting with much success. After the commencement of the war with England, he accepted the position of aid to General Hall, and joined the American army on the western frontier.

After serving some time in the army, Mr. Hosmer's health becoming impaired, he resigned his commission

and returned to the practice of his profession, in which he rapidly arose to eminence.

In the year 1820, the county of Livingston was erected. Hon. Moses Hayden was immediately appointed first judge of the new county, and Mr. Hosmer district-attorney. At that period, district-attorneys were appointed by the Court of Common Pleas, and the most experienced and able members of the bar were always selected for that office. The position tendered to Mr. Hosmer in this instance, was highly complimentary to him as an advocate. He continued to discharge the duties of his office with marked ability untill 1824, when he was succeeded by the late Orlando Hastings, of Rochester, but who then resided in Genesee, and whose life appears in this work.

Mr. Hosmer was now in the zenith of his professional prosperity and success. He appeared in all the courts of western New York and was recognized as an able and successful lawyer, and an ornament to the bar. One of the earliest cases in which he appeared as counsel, was that of the People against the two Robertses—father and son—charged with the murder of J. A. Davis, a hotel keeper at Leroy. This trial took place at Batavia, and created great interest. The defense of Mr. Hosmer was considered able and ingenious, and won for him the highest commendations. The father was acquitted, but the son convicted.

In alluding to this trial in after years, Mr. Hosmer remarked that the result of this trial convinced him of the doubts and uncertainty of trials by jury, for, in this case, said he, "they hung the innocent man and acquitted the guilty one."

The Hon. Luther C. Peck, now one of the oldest and most distinguished lawyers of the Livingston bar, once remarked, "if there is anything beyond the comprehension of Deity, it is the action and decision of a petit jury."

De Tocqueville, the eminent French jurist and author, in commenting upon our jury system, while he admits the uncertainty of it, says:

"The jury contributes most powerfully to form the judgment, and to increase the natural intelligence of the American people. It may be regarded as a gratuitous public school, ever open, in which the juror learns to exercise his rights, enters into communication with those learned in the law, and thereby becomes practically acquainted with the laws of the country, which are brought within the reach of his capacity, by the efforts of the bar and the advice of the judge."

As an advocate, Mr. Hosmer was eminently successful. His manner before a jury was impressive, and his language convincing. He was sometimes vehement, yet his vehemence was tempered to the occasion. Before the court alone, in the argument of purely legal questions, he was calm, deliberate, self-possessed, and always had his case fully and thoroughly prepared; hence, he never failed to commend and retain the attention of the judge.

As a speaker in the popular assembly, he was always a favorite with the people, always drew their attention and attendance whenever he appeared before them. The strong sympathies of his nature were ever enlisted for his client, and, as was ever remarked of him, "Hosmer always thinks his own client in the right." He often undertook the defense of persons charged with crime, prompted alone by his sympathy. On one occasion, while attending court at Batavia, he volunteered to defend a young girl who had been indicted for grand larceny, after the lawyer whom the court had appointed to defend her advised a plea of guilty. He was led to believe by the looks and manners of the girl that she was not really guilty. She had all the appearance of artless innocence, and when her lawyer proposed to enter her plea of guilt, there was a look about her that denied the plea.

"I cannot believe," said Hosmer to the court, while begging for a few moments' conversation with the prisoner before the plea was entered, "that such a casket contains corruption;" and after a short interview with the girl and her friends, he determined to defend her. She was charged with stealing silver spoons, and other silver-ware. The daughter of a poor and widowed mother, who lived at a distance, she had been bound to a wretch who cruelly misused her, overtaxing her strength, almost beyond her endurance, by excessive labor and unremitting toil. Her poor heart yearned for the humble home, the gentle and tender care of that mother who had often soothed the sorrows of her childhood, and clandestinely leaving her master, she sought her home.

Alone and on foot she commenced her weary journey. But her flight was soon discovered; the silver-ware was missed, she was pursued, overtaken, and brought back to her master. A part of the property was found secreted at the side of the road over which she had traveled. Such was the evidence elicited on the trial, on which the public prosecutor confidently expected the conviction of the poor girl. The situation of the prisoner, and all her sufferings, were adroitly drawn out, the character of her master placed before the jury, the absence of any proof that she had taken the property was strongly dwelt upon. Her attempted flight to her mother and its course, was touchingly described.

"She was not fleeing to conceal her guilt, as the public prosecutor contends," said her counsel; "she was escaping from oppression, from a cruel and bitter fate, from a wretch whose heart is harder than the nether millstone, and who would turn the tears of the orphan into money. It is true that this paltry treasure was found near where this girl had passed, and this is all the account they can give of the matter. Gentlemen, until the prosecution prove that this girl placed it there, you must not convict her; nay, you will not

convict her, and the God of the fatherless will approve the verdict which will snatch this unsheltered lamb from a fate worse than death, and restore her to that mother whose life almost depends upon your decision."

The jury retired under the charge of the judge, and soon returned with a verdict of acquittal, which was received by the spectators and bar with great applause, notwithstanding the efforts of the court to repress it.

Among the many important civil cases in which Hosmer was retained, was that of Abner Pratt against Peter Price. Mr. Pratt was a lawyer practicing at Rush, in the county of Monroe, and Mr. Price was a judge of the Common Pleas of that county, and a man of considerable political and social standing. A bitter feud existed between these men, and upon a certain occasion, Judge Price said to a client of Mr. Pratt's, "Yes, Pratt will collect your money, and then steal it, as he has often done for others," or words to that effect.

Upon these words an action for defamation was commenced against the judge, which came on to be tried at a circuit court held at Rochester, April 28th, 1834, Hon. Addison Gardner, then one of the circuit judges, presiding. Mr. Hosmer appeared for the plaintiff; he was ably assisted on the trial by Hon. E. Darwin Smith, then a young and promising lawyer of the Monroe bar, residing at Rochester, now and for many years a justice of the Supreme Court for the seventh judicial district. Judge Price was defended by Hon. John C. Spencer, of Canandaigua, Charles M. Lee, of Rochester, and John Dixon, of Bloomfield. The high position of the parties, the hostility and bitter animosities which this quarrel engendered, the malignity of the words complained of, the ingenuity and ability of the defense, imparted a deep interest to the cause. Mr. Hosmer's address to the jury was not surpassed, even by the grand and majestic ora-

tory of the strong and gifted Spencer, who threw the whole power of his great mind into the contest. In this trial there was a collision of mind with mind, seldom witnessed at the bar. But Hosmer's position and logic could not be overthrown.

After a clear, learned and impartial charge from Judge Gardner, the jury retired, and returned into court with the verdict of one thousand dollars for the plaintiff.

This was one of the heaviest verdicts ever given in an action of slander, in the county of Monroe. Mr. Pratt subsequently removed to Rochester, was appointed District-Attorney of Monroe county, after the expiration of his official term, removed to Michigan, was appointed judge of the Supreme Court of that State, and died while in the discharge of the duties of that office. Judge Price died some years after the trial. And thus the grave has closed over the parties litigant in that suit; all the contesting lawyers, except Judge Smith, and most of the jurymen. How short and earnest are the strifes, the sorrows and the joys of life! Well and truthfully has the beautiful and sublime poetry of the Bible compared the whole career of man to "the path of an arrow," which is immediately closed behind it.

The presiding judge still survives. Having attained the highest professional, judicial and political honors of the State, he retired to private life, distinguished for his many virtues, a stainless Christian character, eminent learning and abilities, reposing in peace, after duties well done, energies, thought and will tranquilized by submission to the Giver of all Good.

George Hosmer was one of the counsel engaged with Hon. Ebenezer Griffin, in the defense of the Morgan abducters, tried before Hon. Enos T. Throop, at Canandaigua, in the year 1826. He was a Mason, and during all the terrible crusade against the mem-

bers of that order, he was their intrepid defender and eloquent champion.

Soon after the trial of the Morgan abducters, he was retained to defend E. J. Roberts, then the editor of the *Craftsman*, a Masonic journal, who was indicted for having published a libel. The interest felt in this case extended throughout the State. All the bitter antagonisms of the day entered into it. Such was the nature of the alleged libel, that in striking down Roberts, its author, Masonry itself would be in a measure prostrated, and, of course, this state of things engendered a fierce contest.

The great legal abilities of Mr. Spencer were again put in requisition, subservient to Anti-Masonry. After a long and closely contested trial, Roberts was acquitted. This result added new laurels to Mr. Hosmer's reputation as a lawyer, while it gratified his dislike to the Anti-Masonic party.

He was once called upon to defend a very poor man against an oppressive suit brought by an overbearing and wealthy citizen, not particularly distinguished for ability or attainments, and who believed that money was more powerful than either. The counsel had reason to believe that some of the jury had heard the ring of the plaintiff's dollars, in a way that would tell on their verdict, and he administered a most withering rebuke against the use of money as controlling juries.

"Gentlemen," said he, "I once believed that the jury box was a sacred place. I know it was so once; but I fear that it is now sometimes desecrated by the hand of bribery. In this case, though, my client has right and justice on his side, and, as it would seem by the evidence, there should be nothing to deprive him of his rights—that he must succeed in his defense; yet my classic reading has taught me that it was an ass, a miserable jackass, whose panniers were laden with gold, that found its way through the gates of Athens, when an armed and powerful foe could not

effect an entrance; and if your verdict is against my client to-day, it will be because the money of a jackass has found its way to some of your pockets. I allude to only a part of the panel before me. Gentlemen, let them be weighed in the balance; let corruption to-day put on incorruption, and the right will triumph."

The poor man succeeded, and the right did triumph. Are not the voice and sarcasm of an Hosmer demanded to administer a wholesome rebuke to juries of this day? Who shall say that they are not?

The political arena never afforded any attractions for Mr. Hosmer. He was ambitious, but his ambition was confined entirely to his profession. But in the fall of 1823, he was persuaded to accept the nomination for member of Assembly from Livingston county, which, at that time, elected two members. He was elected, took his seat in the Legislature of 1824, and was honored with the position of chairman of the Judiciary Committee. His colleague was Hon. George Smith. This was in many respects one of the most memorable sessions of the Legislature which ever took place in this State.

At this session Silas Wright first appeared before the people as Senator from the then fourth senatorial district, which consisted of nine counties, including the county of St. Lawrence, his own county. Although he had been a resident of that county but five years, yet, in the fall of 1823, he was put in nomination for Senator, and triumphantly elected over his opponent, General Moers, of Jefferson county.

Among the important measures proposed in this Legislature, was a bill providing for the choice of presidential electors by the people, who at this time were elected by the Legislature, which, in each presidential canvass, met early in November, for the purpose of choosing electors for President and Vice-President. The bill was introduced as a political move-

ment, to defeat Mr. C. Crawford, who, with Jackson, Clay, Adams and Calhoun, was a candidate for the presidency. Mr. Crawford, through Mr. Van Buren, was confident of securing the New York electors if they should, as usual, be chosen by the Legislature; and hence the introduction of the bill allowing the choice of electors by the people. The measure became at once very popular; therefore the friends of Mr. Crawford did not venture an open opposition to it. Mr. Flagg, a warm supporter of Crawford, introduced a resolution into the House, favoring the proposed new electoral law; but he annexed conditions to it, which, in certain emergencies, would give the choice of electors to the Legislature. The introduction of Mr. Flagg's resolution let loose the fury of legislative warfare, and a contest ensued which had never been equaled in either branch of the Legislature. In the discussion which followed, Mr. Hosmer took an important part. He was a ready, sagacious and eloquent debater, and his clear reasoning powers gave him a high and influential position. He supported Mr. Flagg's resolution, and in March, 1824, delivered his great speech in the House in its favor. It is seldom that a speech on a proposed bill or resolution in a legislative body produced the effect which this speech of Mr. Hosmer's did. It was a profound and statesman-like, a calm and philosophic review of the whole great question. Soon after its delivery the vote on the resolution of Mr. Flagg was taken, and the measure sustained by a vote of 76 to 47.

In the Senate, the Electoral bill passed through several amendments. Mr. Wright favored the choice of electors by the people, and introduced a bill into the Senate to that effect; but his bill was defeated. At length Hon. Edward P. Livingston introduced a resolution postponing the further consideration of the whole matter until the first Monday of the ensuing November, being the day beyond the extra session, when the electors would be chosen by the Legislature.

This resolution passed the Senate, and gave the State of New York to Mr. Crawford. Mr. Wright and sixteen other Senators voted for this resolution, thereby subjecting themselves to severe and bitter censure. They were immediately characterized as the famous "seventeen Senators."

At the close of his legislative term, Mr. Hosmer returned again to the practice of his profession. Declining another nomination, he left the political field forever, so far as entertaining any desire for official position.

He died in the 80th year of his age, March, 1861, at Chicago, while visiting his daughter, Mrs. Wells, of that city.

His highly cultivated literary taste and acquirements rendered him the life of a refined and an intellectual social circle. He possessed a mental energy which awakened and kindled a like energy in those with whom he conversed. The same love of sarcasm and satire which rendered him a formidable antagonist at the bar, tempered by the calm and pleasant amenities of society, rendered his conversation attractive, while he possessed the rare qualification of being an excellent listener to the conversation of others, which is often the talisman of fascination.

In his domestic relations, as husband and father, he was happy. Several children survive him, among whom is the distinguished poet and author, W. H. C. Hosmer, known as the Bard of Avon.

WILLIAM M. HAWLEY.

Early Identified with western New York.—Elected a Constable.—Attends Court and Studies Law.—Sent in Pursuit of a Notorious Criminal.—Singular Manner in which the Man is Captured.—Description of the Allegany County Bar.—Hawley's Practice in Justices' Courts.—His Manner of Trying Causes in Those Courts.—Ludicrous Description of one of These Trials.—T. J. Reynolds.—Horse Shedding a Witness.—The Witness in a Close Place.—Mr. Hawley is Admitted to the Bar.—Forms a Partnership with the famous John Baldwin.—Appointed First Judge of Steuben County.—Elected to the State Senate.—His Career as a Senator.—A Delegate to the National Democratic Convention of 1848.—Description of the Convention.—Delegate to the Buffalo Convention in August, 1848.—His Influence in that Convention.—His Speech.—Co-operates with John Van Buren.—Hawley Joins the Republican Party.—Interview with John Van Buren.—Active in the Republican Party—Retires from Politics.—Character as a Lawyer and a Citizen.—Death.

WITH the eminent lawyer whose name stands at the head of this sketch, is associated much of the history of Steuben county and western New York; while the record of self-made men presents few higher triumphs of unassisted energy and exertion, than is exhibited in his life; for, he was in every sense, the architect of his own fortune. It has been truthfully said, that those who, in the commencement of life, are compelled to struggle with difficulties, determined to overcome them, have the key to success in their hands.

The beautiful fable of Antæus, the earthly giant, wrestling with Hercules, the giant of celestial descent, illustrates the potency of self-reliance and fearless determination, in grappling with formidable obstacles. When Antæus was in danger of being overcome, he touched the earth, instantly regaining his powers, and finally conquering. Thus with the subject of this sketch; he entered the battle of life, com-

pelled to contend with Herculean difficulties, and when, like Antæus, he was sometimes obliged to touch the earth, he sprang again to the contest with renewed energies, which at length gave him the victory.

William M. Hawley was born in the county of Delaware, New York, February 13th, 1802. His father was one of the early settlers of that county, a farmer by occupation. His means were limited, and he could afford his children but few advantages for education. Young Hawley very early evinced a desire for knowledge; and the few advantages within his reach were eagerly seized by him, and turned to the best account. In the humble common school to which he was early sent, he made rapid proficiency in reading, writing, and arithmetic, giving some attention to English grammar.

While very young, a friend of his father lent him Plutarch's Lives, which he read, not only with avidity, but understandingly. Through his whole life that great biographer continued to be his favorite author among the ancient writers. A clergyman in Mr. Hawley's neighborhood, who possessed a very good miscellaneous library for the times, observing the boy's love of reading, kindly offered him the use of his books. The offer was joyfully accepted, and from that time he became an industrious student; every leisure hour being devoted to his books. So retentive was his memory, that once reading a work, he could repeat verbatim, large portions of its contents.

While it is true, that the improvement of which the mind is susceptible by culture, is more remarkable in the case of memory, than in any of our faculties, yet in a boy of tender age, with few advantages for the culture of this, or any other faculty, a memory like his was truly remarkable; and it is not strange that young Hawley soon gained the reputation of being a boy possessing much intelligence and infor-

mation. Perseveringly continuing his studies, he at length acquired considerable knowledge of mathematics, grammar, rhetoric, and the English classics. He early conceived the thought that he should one day become a lawyer, and this idea was the theme of his ambition, the controlling motive of his life. He continued with his father until he was twenty-one years of age, when, with no fortune, except strong hands, a vigorous constitution, the mental acquirements which he possessed, and a determined purpose, he removed to Almond, in the county of Allegany. This event occurred in September, 1828.

As was the custom among the early settlers of western New York, he contracted for a piece of uncultivated land on credit, and immediately commenced the work of clearing it for tillage. His intelligence and business capacity were soon manifested, and he at once took a respectable position among the people of Almond. In the spring of 1824, he was elected one of the constables of that town. The duties of this office were of considerable importance, and required the exercise of some legal knowledge.

Providing himself with the proper books, he soon qualified himself for all the duties of his office. In this manner, he became a kind of legal oracle in the town. At this time, imprisonment for debt had not been abolished, and this relic of barbarism greatly enhanced the duties and responsibilities of constables. Many were the exciting pursuits for criminals and debtors, in which Mr. Hawley engaged.

On one occasion he was directed to arrest a man who had stolen a valuable watch. Several abortive attempts to capture him had been made by other officers, and the services of Hawley were sought.

One afternoon, with a single assistant, he cautiously approached the residence of the man, and from a clump of bushes, discovered him as he was entering his house. Hastening to the dwelling, the pursuers entered, but the culprit could nowhere be found,

although every nook and corner was searched. At length from some cause, the officers mistrusted that their intended prize had betaken himseif to the chimney, which was large, and constructed on the primitive plan. The weather being warm, there was no fire on the hearth. How to get hold of the man, now became the great question. To reach him was impossible, and of course, no persuasion would induce him to come down.

Suddenly a thought occurred to Mr. Hawley. He must have a cup of tea, and he politely requested the man's wife to prepare it for him. But she positively declined to do so. "Then, Madam, I shall be obliged to do so myself, for some tea I must and will have," said he, and stationing his assistant outside of the house to prevent an escape, Mr. Hawley commenced making a fire. The woman attempted to prevent him, but taking a formidable pair of hand-cuffs from his pocket, he threatened to place her in limbo, which at once had a quieting effect upon her, and he proceeded to build the fire without further interruption. In a few moments, the smoke began to curl up the chimney, while the fire crackled on the hearth. Soon a sepulchral voice was heard from the region above, exclaiming:

"Hawley, for God's sake what are you doing down there?"

"Getting tea, and I want you to come down and take some with me," was the reply.

"I don't want any of your tea; it ain't the kind I use, and I shan't come down," said the man.

"I rather think you will take a little of it, this time, and so I'll have the kettle boiling in a few moments," said the officer, throwing some light wood on the fire, which caused the flames to dart up the chimney.

In a moment a scrambling noise was heard, sounding as though the thief was endeavoring to gain the top of the chimney, but in the next instant he

dropped from his hiding place, and rolled at the feet of Mr. Hawley, nearly smothered with smoke and heat. After remaining on the floor a short time, he sprang to his feet, shook his fist fiercely at his pursuer, exclaiming:

"Damn your tea, and you too, Hawley! This is what I despise; but you won't get any tea here, you rascal!"

"I'll get you, and that will do much better, so come along."

"Won't you let me wash myself first?"

"No I had rather have you just as you are, you have got your uniform on, so come along," said Hawley. The man obeyed, and was taken where he was dealt with according to law.

In the discharge of his official duties, he was often one of the attending constables at the various courts held in Angelica. Although Allegany county was remote from the more cultivated portion of the State, yet its courts were graced by the most learned and able judges of that day. Ambrose Spencer, then chief justice, Joseph C. Yates, afterwards Governor Yates, William W. Van Ness, John Woodworth, William B. Rochester, and Robert Monell, each at different times dispensed justice from its bench. while Dudley Marvin, John C. Spencer, Daniel Cruger, Vincent Mathews, Henry Wells, Ebenezer Griffin, and other equally distinguished lawyers appeared at its bar. The legal contests of these gifted advocates were watched by Mr. Hawley with intense interest. Nothing occurred which escaped his notice; and when the law was pronounced by those profound judges, he heard and garnered up all that fell from their lips. Thus, the court room to him, was a great law school, where legal points, precedents, and elementary principles were discussed and practically settled.

During the first term of court which he attended at Angelica, he entered his name as a law student in

the office of the late George Miles, then a leading member of the Allegany bar. As his means did not permit of his devoting his entire time to the office, he took with him to his home, such books as were necessary for him to study, and when relieved from his other duties, he devoted himself to his studies. Thus he continued for two years, perfecting himself in that legal knowledge, which in after years so distinguished him in his profession. Declining the office of constable, he commenced practice in justice court—in the mean time continuing his legal studies. Indeed, while discharging his duties as a constable, he was very often solicited to act in the capacity of counsel, on the trial of cases. Such were now his acknowledged legal attainments and abilities, that he at once gained a profitable and successful business. A distinguished lawyer, who in those days, often met him in justice courts, remarked that "Hawley tried a case before a justice with ability sufficient to distinguish him in any court." He was not merely the sharp, ignorant, swaggering pettifogger—cousin germain to the shyster of larger cities.

His causes were conducted with dignity, propriety, skill, and learning. It must not be forgotten that in justices' courts, grave and difficult questions often occur, the solution of which demands the ablest juridical ability. In the discussion of such questions with older and more experienced lawyers, Mr. Hawley distinguished himself.

In these early legal contests, the most ludicrous scenes sometimes occurred, which Judge Hawley in after life, frequently related with great piquancy; one of which he related to the author a short time previous to his death. It was a case in which the late Thomas J. Reynolds appeared for the defendant. Mr. Hawley had clearly established his cause of action and rested the case. Mr. Reynolds called a certain witness for the defendant, after he was dismissed, recalling him. At each time the witness made the defense

a trifle stronger, but did not quite reach the point which the counsel calling him desired. At length, Mr. Reynolds excused himself for a moment, and called the witness aside, for the purpose of horse-shedding him. He did not, however, get beyond the quick hearing of Hawley, who listened to the following conversation:

"Bill," said Reynolds, "what ails you; can't you understand the point?"

"Yes, but I—I."

"Never mind, Bill, you must go on to the stand again, and get to the point," said the counsel.

"Get to the point; I should like to know what you call getting to the point? Why good God, Tom, I've sworn tremenjously, already, and Hawley, damn him, I believes he knows it," said the witness.

"Never mind Hawley, he can't hurt you; so go back and swear again, spit out what you know, and don't be afraid of Bill Hawley. I tell you again, he can't hurt you."

"I don't know about that," said Bill, with a shrug. "He's got a confounded unpleasant way of squeezing a fellow, who he thinks is guessing at things."

He took the stand again, however, but, before proceeding to testify, Mr. Hawley said, with some severity:

"See here, sir; I wish to ask you one question. Have you not already sworn tremendously on this trial?"

The witness started with a frightened look.

"There, Tom," said he, "what did I tell you?" and immediately left the stand.

He did not appear there again that day. At this time, Mr. Reynolds was not admitted to practice. Some years later, however, he was called to the bar and became one of the most respectable lawyers of the Steuben bar, a generous, high-toned, and useful citizen. A sketch of his life appears in another part of this work.

At length Mr. Hawley confined his studies entirely to the office; in due time he completed them, and, after passing, in a very creditable manner, a thorough examination, he was duly admitted to the bar, and immediately opened an office in Almond. Such had been his reputation before his admission, that he was soon in the midst of a practice of considerable importance.

In the fall of 1837 he was induced to make Hornellsville his future residence, where he soon took a high position among the able and distinguished lawyers by whom he was surrounded, and controlled a large and lucrative practice.

One of his earliest business relations was a partnership with the late John Baldwin, whose legal abilities and keen wit distinguished him throughout western New York, and whom Mr. Hawley always held in high esteem, not only for his learning and talents, but for his incorruptible integrity and generosity. So keen was this singular man's sense of honor, that he could not be induced to embark in the conduct of a cause in which he believed there was real dishonesty. Of course, like all lawyers, he was frequently induced to defend or prosecute an action by imposition.

One day, while in company with Mr. Hawley, and while both partners were engaged in their office, a man who had been charged with stealing flour came in for the purpose of retaining one of them to defend him. He stated his case, and urged his innocence with much earnestness. After listening patiently to him, Mr. Baldwin said, quite sharply:

"Do you really pretend, sir, that you are not guilty of this crime?"

"I do, so help me God," said the man.

Mr. Baldwin was at this time quite lame.

"Hawley," said he, abruptly turning to him, "kick that damned rascal out of the office! he lies in his speech and in his looks. See there," he con-

tinued, pointing to marks of flour still adhering to the sleeves of the man's coat, "he's got the marks of petit larceny stamped on his clothes!"

The man gave one glance at the marks of his guilt, and, without saying another word, left the office. He went, however, to another law firm, was defended by them, but he was convicted.

The partnership of Hawley & Baldwin continued only about one year, when it was dissolved. The practice of Mr. Hawley continued to increase. With unceasing labor and industry, he devoted himself to his clients, and thus attained the front rank of his profession, and acquired considerable wealth.

In January, 1846, he was appointed by Governor Wright first judge of Steuben county. Many years previous to this, Mr. Wright had made his acquaintance, and, regarding him as a high minded, honorable and able lawyer, he tendered him this position as a mark of his esteem and confidence. The appointment gave great satisfaction to the people of Steuben county, for with them the judge was always a favorite, and he possessed many qualifications for a successful judicial officer.

Mild, amiable and courteous, yet firm, decided, dignified and impartial, it is not saying too much of him, that he lost nothing, when compared with his learned and able predecessors. Receiving, however, the position when the second State Constitution was about to be succeeded by the new one of 1846, he held it but a little over a year, and Hon. David McMaster took his place by election, Mr. Hawley being a candidate for Senator in the twenty-fifth Senatorial district of the State.

He was elected in the fall of 1847. John Young was then governor, Hamilton Fish lieutenant-governor and president of the Senate. Though that accomplished and able statesman did not agree with Mr. Hawley in politics, yet, on the entrance of the latter into the Senate, a warm and lasting friendship

commenced between those gentlemen, and Mr. Hawley was honored with the second position on the Committee of Ways and Means, while his name appeared on other important Senate committees during his term.

He was never what might be called a successful politician. Those qualities which in him were most to be admired, unfitted him for the schemes and practices of mere politicians. He was too honest and direct to enter into all their plots and counter-plots; and though, in some cases, the end proposed might be approved by him, yet his soul abhorred the means by which those ends were sought to be obtained.

On the 19th of February, 1848, he delivered a speech in the Senate on certain resolutions instructing the Senators and Representatives in Congress from this State to vote for the prohibition of slavery in New Mexico, whose entrance into the Union was then anticipated. This speech added much to his reputation. It was calm, direct and statesman-like—it was regarded as one of the ablest delivered in the Senate during that winter.

At this time, the question of slavery in the Territories began to be one of great and absorbing interest. The relations of parties began to change. The great questions which, since the organization of the government, had divided the country, were now nearly all settled, and hence the cohesive power which held parties together, was losing its strength in the new issues that were being formed.

A spirit began to sweep over the land, bearing things onward, with a terrible velocity, towards the crisis through which the nation has passed, and men learned that in party, as in material organizations, a destructive and recuperative energy is ever active, and decay or growth is determined by the relative intensity of these antagonistic forces.

Judge Hawley was a delegate from this State to the Democratic National Convention, which assembled

at Baltimore on the 22nd of May, 1848, "at which two delegations from the State of New York presented themselves for admission; one of which was known as the Free Soil Radical or Barnburner delegation, under the guide of the late Samuel Young, and that of the Conservatives or Hunkers, who were under the lead of Daniel S. Dickinson." Mr. Hawley identified himself with the former.

In the language of Mr. Greeley: "The convention attempted to split the difference by admitting both, and giving each half the vote to which the State was entitled; this the Barnburners rejected, leaving the convention, and refusing to be bound by its conclusions. The great body of them united in the Free Soil movement, which culminated in a National Convention, held at Buffalo, August 9, 1848, in which Martin Van Buren was nominated for President, and Charles Francis Adams for Vice-President."

Judge Hawley was also a delegate to the Buffalo Convention, and entered ardently into all its proceedings. He was one of the committee who introduced those resolutions, whose essential elements were afterwards adopted by the Republican party. On the introduction of those resolutions, he delivered a speech, the very sentiments of which, in after years, he reiterated in a Republican State Convention.

"This convention," said he, "is to give the nation a new testament, a new order of things. It is the ax laid at the root of slavery, as a progressive institution. There are to be great and powerful objects thrown in our way, it is true, but patriots must struggle against great obstacles. Timid, small men shrink before them. Dead fish, Mr. Chairman, can swim down stream, but it requires a live and active fish to go up the current."

John Van Buren followed the judge, in a speech in support of these resolutions. A warm friendship had, for many years, existed between him and

Hawley. It was renewed at this convention, with the political faith which they had adopted. A few years after this, the former renounced this faith, but the latter continued in it through life; at first a Free Soil Democrat, then a Republican. After Mr. Hawley united with the Republicans, Mr. Van Buren accepted an inviatation to address a Democratic mass meeting at Hornellsville. Soon after his arrival in that village, Judge Hawley called upon him. The usual formalities of their meeting being over, Mr. Van Buren said:

"Judge, I am sorry to learn that you have deserted the faith of your fathers, and wandered after strange gods. How is this?"

"I have adhered only to the faith which you so eloquently exhorted us to maintain, at the time of your conversion and mine, at Buffalo, a few years ago. Do you not remember, that you told us that you felt as though your load of sins were gone? How is that, Mr. Van Buren?" said the judge.

"Well, Judge, I thought I felt just so then, and it was worth something to have that feeling; besides, you know, as they said at the time, Dad was then under the hay," said Mr. Van Buren, laughing.

After retiring from the Senate, Judge Hawley never again sought for official position, but confined himself exclusively to his profession; and, although fortunate in his financial matters, he continued to practice until within a short period of his death. At the September Steuben circuit for 1868, held at Corning, he appeared and conducted a very important action for divorce, brought by a lady against her husband. There appeared no diminution in his fine mental powers, and he stood at the bar, as he had for years, an able and powerful competitor, though his health had been for some time declining. He always loved the detail of practice, and delighted in the contests of the forum. Like a perfectly disciplined soldier, whose delight is in the precision of military drill, he

viewed all proceedings at the bar, all minutiæ of practice with deep interest, and his large experience enabled him to easily detect incongruities and errors which occurred in pleading, practice, and on trial. Few lawyers were more perfect in their preparation of a case for trial or argument than he. His papers always exhibited, what a correct system of pleading demands, a brief philosophic statement of legally deduced facts, from the circumstances attendant upon the matter complained of, a proper denial of which contains the statements of the opposite party's defense, governed by the same rules, and which forms the issue to be tried by a jury. Like many of the older lawyers, he disliked the Code, preferring the mathematical precision of the old practice, which, though incumbered by some useless words, was adopted by such minds as Barron, Coke and Mansfield, and admired by all the great lawyers of England and America. But this did not deter him from acquiring a perfect understanding of the new practice.

A lawyer of extensive practice, and fine legal abilities, relates, that some years ago, Judge Hawley commenced an action which involved a very difficult and doubtful question of law. The papers required the most minute circumspection and research. They were brought to this lawyer for the purpose of interposing a defense. At first, he did not believe that papers could be prepared, sufficient in form, detail, and substance to sustain such an action, and he anticipated an easy victory. But on examination, he was surprised to find in the papers, a firm and substantial foundation for the cause of action; every objection being anticipated, and every point fully fortified. They were, in fact, the result of laborious study, the offspring of an accomplished legal mind. The action was settled; but the papers remain in the lawyer's office, and have since been used as valuable precedents.

Judge Hawley's character did not escape censure.

There were points in it which naturally drew upon him enmity, and even hatred.

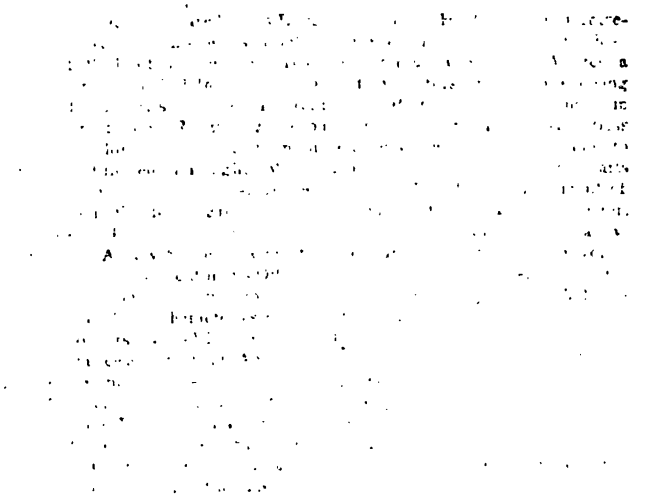
As an enemy, he was bitter and uncompromising, and not without a love of revenge.

As a friend, he was sincere and undeviating. Unpretending and easy in his manners, with pleasant, even fine, conversational powers, he was an attractive companion. There was a sunny humor in his manner, that drew the young as well as the old to him, and which disguised his faults. In person, he was slightly above the medium hight, well proportioned and erect. As a speaker, he was calm, temperate, and logical. He knew how to enliven a dry theme, with a proper play of the imagination, and thus give relief to the fatigue of close attention. In the argument of a purely legal question, at special or general term, he avoided all florid language, and sought perspicuity and conciseness of expression.

In his domestic relations, he was a kind husband, an indulgent and liberal father. As a citizen, he was public spirited, sedulous to advance the interests of the community in which he lived, and reasonably active in all projects of public improvement. The spontaneous tribute of the members of the bar, and the public generally to him, sufficiently attests the high estimation in which he was held, and the general sorrow which followed him to the tomb was not only honorable to him but to the community. He died on the 9th of February, 1869, in the sixty-eighth year of his age. Some years previous to his death, Mr. Hawley united with the Episcopal Church at Hornellsville; and he continued in the unobtrusive and meek observance of religious duties until his death. Without parade or ostentation, he approached the Mercy Seat, asking in spirit and sincerity, that God would be merciful to him a sinner. To live religiously, he did not think himself called upon to give up the proper pursuits and gratifications of human nature. His views of the true excellence of a human being were large

and generous, and hence, instead of that contracted and repulsive character, which has often been identified with piety, he entertained the loftiest conception of the infinite Father, whom he approached with lowly reverence, satisfied if he could but touch the hem of his garment, instead of worshiping with impious assurance and canting zeal. Such was William M. Hawley.

Your Friend
Alvan Stewart



each distinguished at the bar for fearlessly advocating grand, but at the time, unpopular principles of liberty. Mr. Otis, in 1778, before the Supreme Colonial Court of Massachusetts, in his great plea in opposition to the edict of assistance, instituted by the British government—a speech which Mr. Adams pronounced "a flame of fire, at the delivery of which, American independence was born." Mr. Stewart, in 1845, before the highest tribunal of a sovereign State, boldly contending against a system established by the usage of years, and sustained by the chivalry of a nation; in a plea replete with great, lofty, original ideas of human liberty, sparkling with condensed brilliancy, applying the constitution and the laws to the rights of man, expressive with meaning and animation—"coming warm from his soul and faithful to its fires." May it not be said that the spirit of the emancipation proclamation then leaped from the lips of Alvan Stewart?

He was accused of extravagance and ultraism—of being a disorganizer, a disseminator of incendiary principles—an enthusiast, dealing in dangerous, but useless speculations—a fanatic—charged with beholding objects in a sort of prismatic view—and dealing with distorted relations of things; all these matters were, doubtless, sincerely believed of him.

It is a strange feature in our nature, that those who first uphold great and startling truths—truths destined for the amelioration of mankind, destined to live on from age to age, in increased beauty and splendor, are always assailed for their extravagance, their idosyncrasies—follies, or fanaticism; confirming the saying of the great Scotch philosopher, that the attempt to do good to society, is the hardest of all tasks.

Mr. Stewart did not belong to that class of men who never enter into extravagances, because they are so buttressed up with the opinions of others, on all sides, that they cannot, or dare not, move much either one way or the other; who are so slightly moved with any kind of reasoning that they remain

at equal distance from truth and error, making slight progress in either direction. These are persons whom the world calls men of good judgment, and so they are; they can always be elected to office, they can glide into the Legislature of their State, leap into Congress from some hobby; can rail vociferously at error with the multitude, but stand passive before any evil, no matter how stupendous, rather than heroically rebuke it single-handed and alone.

Alvan Stewart belonged to that class who fearlessly strike at mighty wrongs, regardless alike of censure or praise; whose blows indelibly mark the page of history; whose fame, perhaps, unsung in life, is caught by the historic muse and given to immortality.

Alvan Stewart was born at South Granville, Washington county, New York, September 1st, 1790.

His father, Uriel Stewart, was a farmer in moderate circumstances. In the year 1795 he removed to Westfield, Chittenden county, Vermont. There, Alvan attended the common district school. Being naturally studious, at the early age of seventeen he was qualified for a teacher; and in the autumn of 1808, he commenced the duties, pleasures and labors of teaching, devoting his leisure hours to the study of medicine and anatomy. In the spring of 1809 he closed his school, determined to acquire a liberal education. Receiving but little aid from his father, he was compelled to divide his time between teaching and preparation for college. Having passed a satisfactory examination, he was admitted to the University at Burlington, Vermont.

His was a mind susceptible to impressions, and he easily received instruction; therefore, with the diligence and studious industry which he possessed, he soon became one of the most thorough and methodical students in college. In the languages, in rhetoric and eloquence, he was highly distinguished. This, it is true, is but a common characteristic, and can be

said of most ambitious and promising students; but, as has been said of him, "the morals of the young collegian passed the ordeal of college life without yielding to the temptations and to the vices which are, perhaps, inseparable from any place, and he left the institution with unsullied purity of sentiment and manners."

The character thus early formed, Mr. Stewart retained through life.

He graduated with honor, and delivered the Greek oration at commencement.

While in college, one of the literary societies to which he belonged, was permitted to give a public dramatic entertainment, provided the piece to be represented was the original production of one of the members of the society, and founded on some highly moral circumstance or event, and "its language such as will comport with the high morality of this university, with due respect to religion." All the students were greatly elated with the thoughts of witnessing a drama as part of the closing exercises of the year, but the condition that it must be entirely original, for a time was supposed to amount to an interdict of the promised pleasure. In this emergency, Alvan Stewart was applied to for relief; he was requested to write the drama or comedy, from the fact that as an actor in the dialogues which were often spoken in the college, he exhibited histrionic powers of no common order; it was therefore supposed, and justly too, that he, of all the students, could most excel in dramatic composition. Without hesitation he commenced, and finished a comedy entitled "Ecclesiastical Imposition." It was subjected to the inspection and criticism of the faculty; some sarcastic sentences against the clergy in general, some sly thrusts at one of the clerical professors in the institution who was particularly disagreeable to the students, were erased, and the piece was pronounced entirely proper to be performed.

Stewart himself took one of the principal characters, in which the ludicrous was so inimitably blended with the serious and the grave, that it was almost a transparency of his own character; "he made such sudden transitions from the play-house to the church, from pathos to comedy; his witty speeches were so much like a merry jig from the organ loft" following a funeral voluntary, that he kept the audience in a roar of laughter, or dissolved in tears, during his appearance before it, and his play, so far as that occasion was concerned, was a great success.

Through many hardships, struggles, and privations, he at length succeeded in one of the great undertakings of his life, and received his bachelor's degree.

Seneca has said, "That a virtuous person struggling with misfortunes and rising above them, is an object on which the gods look down with delight." It is certainly an object on which all good men look with pleasure. It would, therefore, have been difficult to perceive which were happier, the faculty of Burlington University in conferring the degree upon Alvan Stewart, or Alvan Stewart in receiving it.

At the age of nineteen, he was enabled to leave college, bearing with him the respect and good will of the faculty and students; though penniless, the world was before him, and, conscious of having made his first advance in the battle of life, his self-reliance and ambition prompted him to await its further onsets, confident of victory.

While in college, he made the acquaintance of a young Canadian gentleman, through whose influence he procured a professorship in a school of royal foundation, near Montreal. Here he studied, with considerable success, the French language.

He continued in this institution until June, 1812, when the troubles between England and the United States culminated in war. Owing to his outspoken patriotism, Mr. Stewart incurred the displeasure of

one of the officers of the institution, which resulted in an open altercation, and he tendered his resignation; but so valuable were his services as a teacher, that the difficulties were adjusted, and he was induced to remain another year. At the close of the summer term, he returned home, where he passed his vacation. In the following August, on his way to resume his duties, soon after crossing the Canada line, he was arrested and taken to Montreal as a prisoner of war. Through the influence of friends, he was at length released; but such was the condition of the country, that it was unpleasant for him to remain there, and, resigning his professorship, he again returned home.

He was now out of employment, with but a small sum of money in his possession. He endeavored to obtain the position of principal in the Plattsburgh Academy, but, not succeeding, he left his father's house, and commenced a journey on foot, to Albany, with the hope of securing employment in that city as a teacher. The distance which he was obliged to travel was a hundred and eighty miles. With a stout heart, and inspired with hope, he reached that city in less than five days after leaving home. But there, disappointment again awaited him; he remained in the city a week, but, finding no employment, he once more set out on foot in search of a school.

He continued his journey for several days, meeting with no success. At length, with an empty purse, wearied, but not discouraged, he reached Middleburgh, in the county of Schoharie, New York. Here he met with a singular adventure. The excitement throughout the country, occasioned by the war with England, was now at its hight. The war spirit had infused itself into all circles, and the policy of Madison and Tompkins, was highly popular.

There were those, however, who opposed the war; these persons were regarded with peculiar aversion and hatred by the war party, who often charged them with giving aid and comfort to the enemy.

On Mr. Stewart's arrival at Middleburgh, he found a large body of militia assembled there, preparing to move to Sackett's Harbor, which was then menaced by the British. The sudden appearance of a stranger at this peculiar juncture, on foot, and with no apparent business, created suspicion among the zealous patriots. Entirely ignorant of this, Stewart freely and readily answered all interrogatories propounded to him. In doing so, he evinced such perfect knowledge of the geographical situation of Canada, the disposition of the troops along the frontier; he talked so freely of the popular sentiment in the king's dominions, that his interrogators were convinced he had appeared among them in the character of a spy. When the interview ended, he was surprised at the singular conduct of the officers, a group of whom drew aside, and, from their excited manner, and the frequent glances which they directed towards him, he was convinced that he was the subject of their consultations. From the dark and threatening looks of the men, he was aware that he was an object of hatred or suspicion, and yet he could give no reason for this strange conduct.

He was at one of the hotels in the village, but as matters assumed such an unpleasant appearance, he proposed to seek another place of rest. Taking his bundle in his hand, he inquired for another hotel; it was pointed out to him. To reach it, subjected him to a walk of a hundred rods; hardly had he gained half the distance, when a file of soldiers, armed with muskets, overtook him, and he was ordered to halt.

"What does this mean?" he inquired.

"It means that you must consider yourself arrested, and return with us," replied the officer in command.

"Arrested? and for what?"

"We don't allow spies among us without picking them up and treating them according to the rules of war; so move along, sir," said the officer; and Stewart

was conducted into the presence of the commander of the troops.

A drum-head court-martial was organized, and the young stranger was hurried to trial, charged with being a spy.

Matters now had assumed a decidedly unpleasant and dangerous appearance. But Alvan Stewart exhibited the same composed presence of mind, the same firmness which, in after years, saved him from the fury of a howling mob.

When the presiding officer of the court announced his readiness to proceed, Stewart asked the privilege of being heard. It was objected, at first, that such a proceeding was contrary to the rules of courts-martial; but his manner, and that peculiar expression of a face which always enforced homage, and which once seen was never forgotten, plead eloquently for him, and his request was granted. In that solemn and impressive manner which at times rendered his eloquence so irresistible, he commenced by saying:

"I think myself happy, O president of this court-martial, because I shall answer for myself this day, before thee, touching all things whereof I am accused of these soldiers; especially because I know thee to be expert in all customs and questions which are among the rules of war; wherefore I beseech thee to hear me patiently."

He then entered minutely upon his defense. His appearance, his accent, his gestures, were so sincere; he spoke so feelingly of the wrongs of a poor, guileless traveler, with no friends, that he gained the sympathy of the officers and soldiers. Occasionally, that love of the ludicrous, which in after life set courts and juries in a roar, took possession of him, and the stern tribunal before which he stood was convulsed with laughter.

"I pray you," said he, "do not emulate Alexander the Great, as depicted by Fluellen, in Shakespeare, who, in his rages, and his furies, and his

wraths, and his cholers, and his moods, and his displeasures, and being a little intoxicated in his prains, did in his ales and his angers, look you, kill his pest friend, Clytus." The sly hit about being "intoxicated in the prains," while it produced roars of laughter from the soldiers, made the dignified president of the board, a scowling militia captain, wince, for certain reasons which Stewart understood. He closed his address in a patriotic appeal, which was full of deep, impressive eloquence, and which carried all hearts with it.

Resuming his seat, he quietly awaited results; for a moment there was the deepest silence. At length the commander of the post arose and declared his conviction that the prisoner was not a spy, suggesting to the judge advocate that he ought to be discharged, and Stewart was set at liberty.

The scene was changed; he was now surrounded by friends on all sides. In better days he frequently related this incident, and on one occasion he remarked that could he have that court-martial speech just as he delivered it, he would willingly give any sum of money.

He remained at Middleburgh a few days, and then, much to the regret of the soldiers, continued his journey, with no definite destination in view.

At length he reached a fork in the road; a friendly guide-board informed him, that one of the roads led to Utica, the other to Cherry Valley. Standing at the point where the roads diverged, he held his cane up perpendicularly, and let it fall as it would, determined to follow the road into which it fell; as it fell in the road to Cherry Valley, he regarded that as a favorable omen; he followed the indication, and arrived there the next day,—the 13th of September, 1812.

He found the academy at this place without a principal, and immediately applied for the position. He was informed that there were several applicants

for the place; but the manner and conversation of Mr. Stewart pleased the trustees; a bargain was concluded, and he soon entered upon the discharge of his duties.

The next day he was entered as a student at law, in the office of James Brackett, Esq., a distinguished lawyer of Cherry Valley.

As Mr. Stewart had regularly pursued classical studies for four years, since he was fourteen years of age, that time was deducted from the seven which were then required of young men before their admission to the bar.

Fortunate in pleasing the officers and patrons of the academy, he prospered as a teacher, and advanced himself with great rapidity as a student at law. He continued at Cherry Valley until May, 1813, when he returned home, well clothed, considerably advanced in his professional studies, and one hundred and eighty dollars in his pocket,—the net profits of nine months' teaching. Early in June following, he entered the office of Palmer & Walworth, at Plattsburgh, N. Y.; the latter was subsequently elevated to the high office of chancellor of the State.

Few persons, in any age or country, ever obtained so high a station, and continued in it so long, with such unsullied excellence of character, as did Chancellor Walworth. As was said of Sir Samuel Romilly, "He was in truth, a person of the most natural and simple manners, and one in which the kindliest charities and warmest feelings were blended, in the largest measure, with that firmness of purpose and unrelaxed sincerity of principle, in almost all other men found to be little compatible with the attributes of a gentle nature, and the feelings of a tender heart." The reports of cases adjudicated in the old Court of Chancery, are living and enduring monuments of his judicial ability and learning.

Mr. Stewart was so imbued with the spirit of adventure, that it was with great difficulty he could con-

fine himself to the wearisome, plodding life of a law student. After remaining at Plattsburgh a few months, he determined to visit the western country. Accordingly, he once more started out on the wide world; but by the time he reached Cherry Valley, his funds were exhausted, and he once more entered the academy at that place as its principal, and continued his legal studies in the office of the late Judge James O. Morse. But when, by his academical labors, his purse was once more replenished, he again, in company with Ira Bellows, entered on his prospecting tour through the then far west, now western New York, traveling on foot. He visited all the points of interest in that region; at length he reached Olean Point, where he remained a few days to regain his strength and vigor.

While there, he was retained to try a suit in a justice's court, which he did much to the satisfaction of his client and his own gratification. About this time, a raft was in readiness to leave Olean, on which he embarked for a trip down the river; the expenses of which were defrayed by rendering some slight service to the raftsmen on the way. At the junction of French creek and Allegany river, he took leave of the raft, and engaged passage on a flatboat to Pittsburgh.

At length, in April, 1815, he reached Paris, Kentucky, with thirty dollars in the treasury. Here he obtained a desirable position as principal teacher in an academy, employing his leisure hours in the prosecution of his legal studies.

Yielding again to his love of adventure, in April, 1816, he closed his school, and with three hundred and seventy-five dollars in his pockets, he once more commenced his wanderings.

On the 20th of May, following, he visited Lexington, Kentucky, and, provided with letters of introduction from a friend at Paris to Henry Clay, he called on that illustrious statesman, who was then speaker

of the House of Representatives, having just returned from Washington to Ashland. He received the young traveler with that graceful benignity, which rendered his manners so extremely pleasing and even fascinating to all who approached him.

He entered freely into conversation with his guest, discovering in him, a fertile and vigorous mind; learning that he was preparing for the bar, he manifested much interest in him, giving him some salutary advice as to the manner of pursuing his studies, and as to the character and influence of the lawyer.

"You must," said Mr. Clay, "cultivate, assiduously, the habit of reading, thinking, and observing; for there is no excellence without great labor."

Before Stewart took his leave, Mr. Clay gave him letters of introduction to eminent gentlemen residing in the towns which he proposed to visit.

In speaking of this interview, Mr. Stewart once remarked, "The moment my eye fell upon Henry Clay, before he uttered a word, I was impressed with his air of natural greatness. As has been said of Halifax, his brow, his eye, his mouth, indicated a powerful intellect, and his placid dignity, half courtly, and half philosophic, belonged to Clay, and to Clay alone."

After visiting various parts of the South, Stewart returned to Cherry Valley, and resumed his studies in the office of his friend, Judge Morse.

Having enjoyed all the novelties and all the perplexities, resulting from a life of travel, he determined to relinquish all other pursuits, and prepare for his admission to the bar, resolved to become the lawyer in the depth, extent, variety, and accuracy of legal learning; and he carried his resolution into effect; the laws of nature—the laws of nations—the civil law—the law merchant, and the maritime law, all received from him the closest attention. It was his ambition to be able, as Cicero recommends, *apte*,

distincte, ornate dicere; how well he succeeded, is revealed by his future professional career.

In due time he was admitted to the bar, and, as a partner of Judge Morse, commenced the practice of law at Cherry Valley. He soon acquired a high reputation for eloquence and talents, and gained a properous practice.

Though he loved the principles of law as a science, though common law, precedent and statutes, were familiar to him, yet he did not relish the technical, mechanical and formulary branches of his profession. But, as necessity compelled him to labor, he chained himself to the tasks which the life of a country practitioner at that period imposed upon him; and, notwithstanding the natural tendencies of his mind, he entered the field of special pleading, whose formulæ, to use the language of another, become as much a scientific instrumentality in the system of actions then existing, as is logarithms or algebra in the business of mathematics. "Their use, or their usefulness, or their necessity," continues the writer, "is as much a question of science as is either logarithms or algebra." And he became familiar with the Demurrer, the Plea, the Replication, the Rejoinder, the Surrejoinder, the Rebutter and Surrebutter, which series of pleading has been pronounced "the *rationale* of the process of judicial investigation."

Thus, for sixteen years, he devoted himself to his profession with such pecuniary success that he acquired considerable property, and gained the reputation of an eminent lawyer. But this entire dedication of himself to business began to affect his health, which at length became so seriously impaired that he was obliged to surrender the details of office business, and at length to give up, for a time, the entire practice of his profession.

At this period, he was advised by his physician to travel; and accordingly, in 1831, he visited Europe.

He returned home, with his health much im-

proved. Early in the year 1833, he disposed of all his interests at Cherry Valley, removed to Utica, and in that city resumed his profession, but he confined his business entirely to the courts, having nothing to do with the drudgery of office practice. In the capacity of counsel, his business extended over a large portion of central New York, and even into distant counties, meeting in antagonism the ablest lawyers in the State.

The labor, strife and collisions of his profession did not in any degree impair his love of letters, and the culture of his mind. He read, critically, all the eminent Latin historians in the original.

Frequently, in speaking of Livy, Sallust and Tacitus, he used the language of an elegant English scholar: "I am pleased with Sallust for entering into those internal principles of action which arise from the characters and manners of the persons he describes; with Tacitus for displaying those outward motives of safety and interest, which give birth to the whole series of transactions which he relates; and with Livy for his inimitable manner of telling a story."

With great industry, and much expense, he gathered a library, from which he drew the inspirations of an elegant literature. In his hours of relaxation from business he retired to it, and over those pages which in earlier years fired his admiration and formed his youthful taste, he forgot the toils, cares and weariness of life's great struggle; thus employed, he returned again to that period when ambition has no bounds and fancy no curb.

Ah, what power is there which calls us so forcibly from the stern scenes of our manhood, back to the beautiful ideal of our youth, like glancing over our earlier studies? Friends—classmates—those "whom youth and youth's affections, bound to us," start up before us, and, ere we are aware of it, boyhood has come again.

In the solitude, in the conflicts and struggles of

his youth, the strength of Mr. Stewart's mind was called out; they drew him into intimacy with the outward universe—with man—with his own soul; gave his nature a kind of poetical habit, and stimulated those elements of pathos which often started out in his speeches, and carried his auditory captive.

Mr. Stewart's attendance upon a circuit was always regarded as an event of interest, both to the bar and to laymen.

He was once engaged for the plaintiff in an important case at the Otsego Circuit. The counsel for the defendant, taking umbrage at some remark of Mr. Stewart in his opening, during the trial made several sarcastic attacks upon him. It happened that this lawyer, a few weeks previous, had been strongly accused of receiving the visits of a certain lady in his office, quite too frequently to warrant the conclusion that she came there on legal business, and the matter created much scandal. This affair had come to the ears of Stewart.

In his address to the jury, the lawyer continued his attacks. At length he remarked, raising his voice to a high pitch, that "when the counsel for the plaintiff died, it should be written on his tombstone, 'Died of attempting a dry joke,' for that, gentlemen, is probably the way he will shuffle off this mortal coil." Of course, considerable laughter followed this remark, and the counsel believed he had annihilated his opponent.

Mr. Stewart, in addressing the jury, made one of those efforts, which has given him his high reputation as an advocate; he made no allusion whatever to the counsel opposed, until he had nearly closed his remarks; when he suddenly paused, and with one of those looks which all knew was a prelude to a withering sarcasm, said:

"Gentlemen, I had nearly forgotten that I have an opponent here; really he has done so little in the way of defense, that having hardly felt him, I was in

danger of overlooking him. But you will say that it would be unkind for me to do so, since he has passed through all things earthly, down to the period of my death, and benevolently prepared my tombstone for me. In charity, therefore, I will do something for him; but what I do will only be suppositious. Suppose, gentlemen, that some day my friend here should be found dead in his office; such mournful events do sometimes happen. Now I will suppose what the verdict of the coroner's jury would be in that case. It would, gentlemen," said he, in a deep sepulchral voice—" it would be, 'assassinated in his office by Kitty Sly, who pretended to go there for counsel.' "

The scene that followed can better be imagined than described. There stood Stewart looking the very picture of solemnity, until the explosion ended, when he continued with a deeper shade of sorrow passing over his features,—" gentlemen, as my friend here, has been terribly exposed to such a fearful fate, I can only bid him—beware! beware!"

Again all in the court-room were convulsed with laughter, which the officers in vain attempted to suppress. Though that lawyer lived to try many more causes against Mr. Stewart, he never again attempted his sarcasm upon him.

Luther R. Marsh, Esq., who, during the latter part of Mr. Stewart's professional career, often heard him at the bar, and who knew him intimately, thus speaks of him:

"He was one of the most formidable adversaries that ever stood before a jury. You could do nothing with him, nor make any calculations for him. It was impossible to tell where his blows would fall, or where his point of attack would be, or what scheme of defense he would adopt.

"His peculiar and overflowing humor, strange conceptions, and original manner, united with the sturdy common sense at the base, seemed to carry the

jury irresistibly with him, and submerge all the sober arguments of his opponent in a sea of laughter.

"Even the strongest charges of the judge were powerless against him, of which the late Judge Gridley used often to complain.

"With his rare humor, which seemed to interpenetrate all his thoughts, there were springs of great pathos in him—a power of touching the sensibilities—a fancy that illuminated his pathway through the driest details of fact—a mastery of the philosophy of his subject—a copious vocabulary—a grand and sweeping style, which bore you along as on the current of a river.

"His manner of speaking was very deliberate; his temper admirably under his control, and it was impossible to ruffle him, or throw him off his guard. His repartee, though quick and demolishing, had in it no personal sting, and his adversary was often obliged to join in the laugh against himself.

"The court-room at Otsego often rang with the sheriff's call to order, after Stewart had arisen to address the jury, and before he had opened his mouth.

"Indeed, I have seen the supreme court-room, with Judges Nelson, Bronson, and Cowen on the bench, in an uproar, at his manner of reading a dry affidavit, and the judges themselves unable to maintain their gravity."

During his active practice at the bar, Mr. Stewart, though he took a deep interest in all public matters, devoted but little of his time to politics as a mere partisan. With no ambition for office, or political distinction, himself, he had nothing to do with the scramble for office—with party intriguers—with the degrading practices of juggling political managers of local politics, nor the leaders of conventions.

On great national questions, which were called into operation by the pressure of interesting and important circumstances, particularly the question connected

with the tariff, the character and qualities of Mr. Stewart gave him great weight and influence.

Possessing a mind orignally strong, ardent, capacious, and discriminating, he observed, the manifestations and results of the theories which the various systems of home protection had elicited.

In the year 1826–27, the great question before the nation, particularly at the north, was that of the tariff.

Mr. Stewart was an outspoken protectionist; a series of articles written by him on that subject, had attracted public attention, for the clear and able manner in which he discussed the great matters of commerce, finance, and our manufacturing interests. Some of these articles exhibited the power—the penetration of Huskisson, and the comprehension of Wright; they greatly enhanced his popularity, and gave him the reputation of being a man of a strong, extended, and liberal mind.

In the summer of 1827, the interest in the tariff question had become so intensified, that "the Pennsylvania Society for the protection of Manufacturers," &c., called a national convention, to be held at Harrisburgh, September 25, 1827.

The northern States, with great unanimity, prepared to send delegates to this convention.

A State convention was convened at Albany, in August of that year, which was largely attended, every county in the State being represented. The late Judge Buell, of Albany, was president. The convention was addressed by Colonel Young, of Saratoga, General Van Renssalear, of Columbia, and Alvan Stewart.

A delegation, consisting of highly distinguished citizens of the State, among whom was Mr. Stewart, was chosen to represent the State in the approaching national convention.

Mr. Stewart was also one of the committee chosen to prepare resolutions expressive of the sense of the

common sentiments of the people at that period, on the subject of home protection.

These remarkable resolutions, emanating from the people of the Empire State, on the great question of protection, had a decided influence on the other States,—they were drawn with great care, and bore the indubitable evidence of the most exalted statesmanship.

At Harrisburg, Mr. Stewart was again heard on the question of a protective tariff; his speech, exhibiting a comprehensive knowledge of the subject, produced a marked effect upon an audience composed of the representative wisdom of the North.

In 1828, though then a Democrat, he abandoned the support of General Jackson, because of his opposition to the tariff, and published an address to the people of his county, from which the following extract is taken:

"The Southern States,—and they will all support General Jackson,—may be set down as feeling an unreasonable enmity to the tariff law, because it gives strength, vigor, capital, home-market, and an increase of votes to the Northern and Middle States. To these southern opponents, may be added the city of New York, part of Boston, and some other of the New England seaboard towns, which are joined to foreign idols, and constitute positive enemies of the tariff,—bound to never ceasing opposition till its repeal.

"To this corps may be added a class of men-serving, doubting, compromising, unbaked and combination-forming politicians,—always ready to embark for or against their country, as they think will best suit their own interests. And to these may be added; England's influence over her debtors in this country; her threats, already, to ruin us with smuggling, to force her goods upon us from the Canadas; Peel and Huskisson have told the States north of the Potomac, that they do not know how to manage their own af-

fairs; and all this influence to be led on by an administration favorable to the abolition of the protective system. Might not a friend of the tariff, when he sees this force brought to bear against the American system, withdraw and sink down in mournful silence, as Æneas withdrew from the defense of Troy, when he saw Neptune shaking the wall and Juno heading the besiegers?"

It is singular that a man possessed of such almost transcendent abilities, should have had so little political ambition. He possessed that administrative ability, that effective eloquence and versatile knowledge, which, in a parliamentary body, would have rendered him powerful. But he was destined to another sphere of action, to which his genius, his learning and his eloquence became subservient.

The first anti-slavery movement in the United States which assumed any organized form, took place in 1815, under Benjamin Lundy; for years it struggled with what may be called a doubtful existence. But through the unwearied energy of Lundy, a convention was held in Philadelphia, which gave considerable vigor to the cause, and continued its existence until the advent of William L. Garrison, who, in 1830, after lecturing on the subject of abolitionism in the various cities of the north, sometimes assailed by mobs, and everywhere meeting with insult and opposition, established in the city of Boston, an anti-slavery paper called *The Liberator*, with its bold motto, "Our country is the world, our countrymen all mankind." Soon after, the more defiant and startling words, "No union with slaveholders; the Constitution is a covenant with death and an agreement with hell," were added.

This last motto was regarded as the utterance of the most extreme fanaticism, and was everywhere met with execration and invective; it increased the spirit of opposition. It resulted in dividing the opponents of slavery into several parties; the Garrisonians, who,

as we have seen, were hostile to the federal constitution, because they believed it sustained slavery, being one of the factions into which the friends of the negro were divided.

At this period, anti-slavery societies were formed in many of the northern States, under some of the divisions which have been mentioned.

In the language of Horace Greeley, there was "a large and steadily increasing class, who though decidedly anti-slavery, refused either to withhold their votes, or to throw them away on candidates whose election was impossible, but persisted in voting at every election so as to effect good and prevent evil, to the extent of their power."

For several years prior to 1830, the anti-slavery movement caught the attention of Alvan Stewart; the manner of his gradual identification with it illustrates how the spirit of reform often wrestles with an intelligent and gifted mind.

He came at length to consider what he called "the mighty question of human liberty placed under the control of twenty-seven State constitutions, their laws, and the federal constitution, and acts of Congress, and the ten thousand forms which liberty may be abused, from the most horrible slavery, to the slightest invasion of a trespass;" and he entered the crusade against slavery with all his mind, might, and ability, believing in that reciprocal equity — those elevated truths, which teach "that all men are endowed by their Creator with certain inalienable rights."

Whatever were his faults, extravagances, or fanaticism; the heroic self-denial with which he gave himself to this cause, the splendid and lofty eloquence with which he maintained his position, won the warmest attention, sympathy, and commendation.

The history of nations proves beyond successful cavil, that men are more apt to suffer from ultra conservatism, than from their destructive radicalism.

The practical cures for evils in government are

often difficult. "Many will assent to all that may be affirmed as to the reality of those evils, who, through a short sighted prudence, will object to every practical method of redress; believing, that they must be suffered as a matter of duty, because there are incidental evils in the remedies."

This point was directly met by Mr. Stewart, in maintaining that no people can be obliged to suffer from their rulers, because they choose to do what they have no inherent right to do.

In 1838, The New York State Anti-Slavery Society was formed, and Alvan Stewart was its first president.

So deeply did he enter into the measures of the society, that he nearly abandoned the practice of his profession. Such, however, was his reputation as an advocate, that he could not entirely emancipate himself from all professional duties; but he gave up his office, and only attended the courts at the solicitation of his old clients, whom he could not shake off.

He traveled through the New England and western States, organizing anti-slavery societies, collecting funds to sustain them, and addressing large bodies of people; bravely confronting passion, bigotry—organized and unorganized hostility—the extremities of lynch law, and all manner of threatened violence.

At Utica, the home of Mr. Stewart, the announcement that a meeting of the Anti-Slavery State Society would be held there, on the 11th of August, 1835, produced the most intense excitement, resulting in an organized opposition to it, which subjected him to great personal danger.

Notwithstanding the threats, that if he attempted to organize the meeting, he would be mobbed, he was promptly in his place, and as the clock struck the hour for opening the meeting, he called the assemblage to order. The first business of the meeting was speedily accomplished, before any violence could be attempted.

The scene which followed is thus graphically de-

scribed by Luther Rawson Marsh, in the introductory chapter to his valuable work entitled, "Writings and Speeches of Alvan Stewart, on Slavery."

"While Mr. Lewis Tappan was reading the declaration of the sentiments of the convention," says Mr. Marsh, "a force, in the form of a numerous committee of the citizens of Utica, who had been appointed by the court-house meeting, entered the church, followed by an enraged mob which crowded the building. The committee demanded to be heard. The multitude shouted. It was impossible for a Stentor to lift his voice above the terrific din. Alderman Kellogg, a man of great personal strength, was seized, struck, and his coat torn to pieces. The proceedings of the convention were drowned in the yells, oaths, tread, and rush of the frantic throng. Mr. Stewart vainly attempted to be heard. Angry menaces at intervals, as the crowd paused for breath, rang through the church. The aged secretary, a clergyman and revolutionary soldier, was rudely handled, and his papers seized. The brave old man would not surrender them, but scattered them defiantly in the air. The convention, unable to proceed in the deafening uproar, adjourned, and the delegates left the house amid a shower of threats and imprications."

"I was standing near Mr. Stewart," says Mr. Storms, "at the hight of the excitement, and saw a porter, named Mathews, a canal runner, and a powerful man, take hold of him. Stewart had long been enfeebled by poor health, but his dormant muscles waked up at the touch of his assailant; his whole soul seemed in his arms, as he lifted the stout porter from his feet, and tossed him like a fly away from him.

"It was always a mystery to Mathews how his strong new coat was rent in twain unnoticed at the time, as he was flung from the giant grasp of Stewart.

"After the adjournment, the hotels were visited, and the foreign delegates ejected. The excitement did not abate. In the evening, the mob demolished the

anti-slavery printing office, destroyed its furniture, and strewed the street with the offending types. Mysterious rumors indicated that a night attack was contemplated on Mr. Stewart's house.

"Mr. Stewart becoming convinced that the mob was in earnest in its designs to assail his mansion, went about the necessary preparations for defense. Carpenters were immediately employed; hasty barricades, consisting of large timbers, were put up at the doors and windows. A number of friends were assembled who were of the right stuff, and fifty muskets obtained and loaded, and all was ready for action. Stewart directed the defenses deliberately, but with earnestness and decision. One of the members of the convention from abroad, who was present, said,

"'Mr. Stewart, I can't stay with you. I am a man of peace.'

"'So am I,' replied he, 'but this house is my castle. It is my duty to defend this household, and I shall do it. I am captain of this fort, and if they come I'll mow down fifty of them in the name of the Lord.'

"It became rumored in the town that a cordial reception at Stewart's house might be anticipated. Scouts were sent forth to spy out the position of affairs. Their reports were not favorable to their enterprise, and the contemplated assault was abandoned."

Many of the members of the convention, the next day, by invitation from Gerrit Smith, visited him at his residence in Peterboro. On their way they were assailed by various persons, and were pelted with mud, stones, rotten eggs, "as they marched through an enemy's country."

Thirty-five years have passed away since the members of that convention were thus driven, like dogs, before an infuriated mob, simply because they were opposed to slavery; and now, how changed is the scene! The principles of that fleeing crowd have triumphed, and slavery is a thing of the past.

A person charged two lawyers with inciting the

mob, and those gentlemen of the bar brought an action for slander against the man making the charge. On the trial, Mr. Stewart appeared for the defendant, and his defense was powerful, bold, and inimitable. In all the language of irony, nothing has ever been found to equal some parts of his address to the jury.

"These abolitionists," said he, "were fleeing from a mob at Utica; but they ran from Scylla to Charybdis—they ran from the giant of mobs at Utica, and were brought up by the squadrons of these two captains of rotten eggs—these egg and mud marshals. Instead of the deep learning and pens of these two *promising props* of the country being employed to show that the abolitionists were wrong, mud and eggs were used, as a safer kind of logic in their hands than the artillery of the mind. These men thought they were a portion of that salutary public opinion of the United States, which governors have told you was the medicine to bring the friends of liberty to their senses."

Mr. Stewart continued to advocate his anti-slavery measures with undiminished zeal; no better proof of his success is needed than the following extract from a letter written by him to Lewis Tappan, February 11th, 1836, from Utica.

"Theodore Weld is lecturing here, and has been for four nights, in the mob convention church, at Utica, to the admiration of hundreds.

"The house is jammed every night. . . Not a dog wags his tongue, mob like, against us. The days of mobs are gone by," &c.

In 1842, John G. Whittier wrote to him as follows:

"My Dear Friend:

"Thou hast doubtless already seen by *The Emancipator and Free American*, that we have declared our determination to secure, if possible, thy attendance at our convention of liberty, at Boston, on the 16th of next month; and, I now, in behalf of the lib-

erty party of Massachusetts, and in accordance with my own feelings, earnestly invite thee to be present on that occasion.

"The legislature of the State will be in session, and evening meetings will be held in the State house. We *must* have thee with us. We shall have a mighty gathering, and we want thy voice among us, uplifted in the name of God and humanity. Do not disappoint us. Thy attendance at the Worcester convention was of immense service to us. . . . . There is an intense desire to hear thee, and thou wilt have such an audience as could not be gathered elsewhere in the Union. . . . .

"JOHN G. WHITTIER."

Letters of this kind were addressed to him from all parts of the northern States, exhibiting the estimation in which he was held as a public speaker.

"Alvan Stewart," said the late William Goodell, "was the first to elaborate a compact argument in defense of the doctrine that the federal government had constitutional powers to abolish slavery in the slave States," and he therefore originated and advocated the introduction of the slavery question into politics.

"He was," says Mr. Marsh, in his work already referred to, "satisfied that the reform could only be carried by the ballot-box; he urged the organization of a liberty party, and carried it against the stormy opposition of many who were even then regarded as advance men of the anti-slavery movement."

This little party, beginning only with a few thousand votes, swelled its numbers at each successive election, until at last it stood between Whig and Democrat, holding the balance of power, resulting in that masterly achievement, the union of the Whigs and Abolitionists under the new name of the Republican party, whose existence, thus far, from whatever point

it may be viewed, has in it much of the material which gives a deep interest to the page of history.

But the ablest forensic—perhaps the ablest effort of any kind, which Mr. Stewart ever made, was at Trenton, on the 21st and 22nd days of May, 1845, before the justices of the Supreme Court of New Jersey, the Hon. Chief Justice Hornblower, and his associate judges.

The cases were entitled, The State *v.* John A. Post, brought before the court on writ of *habeas corpus*, and The Same *v.* Van Buren.

The object of these writs was to test the institution of slavery in the State of New Jersey, which Mr. Stewart, counsel for the slaves, contended was abolished by the first section of the bill of rights in the new Constitution of New Jersey, which went into operation on the 2nd of September, 1844.

His speech occupied about eleven hours; from its exordium to its peroration, it was listened to with the deepest interest.

He attempted no variety of imagery—no flights of poetry, and but few impassioned sentences; yet, some of it was sublimity itself. It was reason and law applied to lofty principles of human liberty—it was the natural language of a fearless freeman irradiating his great theory of constitutional rights. He struck at slavery, as Erskine did at constructive treason, in the trial of Lord George Gordon. Erskine's defense was triumphant—the moment he ceased speaking. Stewart triumphed at last; and as constructive treason is a thing of the past in England, so slavery is a thing of the past in the United States; or, as has been already said, as Otis struck for liberty in 1775, so did Alvan Stewart in 1845.

His argument unfolded a theory which was in advance of his age; it struck out great truths, which fell with mighty power upon the court—it was unanswerable.

It is not, by any means, a faultless production;

portions of it move on in a pace somewhat desultory, while other portions are not entirely free from verbosity, and it is wanting in that terse argument, that distinct arrangement by points which generally characterizes efforts of that kind before the court in banc; it broke over the banks of conventionality by the grandeur of its subject. But these, and one or two other objections, which might be pointed out, are like a few spots on a great luminous body; while they may attract the attention of a close observer, they do not diminish its light or deface its beauty.

Some time after the delivery of this speech, his health began to decline, a slow but incurable disease seemed to have seized him, yet he continued to labor with unwearied zeal in the anti-slavery cause, until the latter part of April, 1849, when his disease assumed a more acute form, which admonished him, that his days were drawing to a close, and on the first day of May, 1849, it terminated fatally; he was then in the fifty-ninth year of his age.

The esteem in which he was held, was attested by the general regret and sorrow manifested on the announcement of his death. The public journals, and the bar, in appropriate language, eulogized him, while letters of condolence from the most distinguished personages in the nation were received by his family. One of his eminent compeers in the anti-slavery movement, thus wrote of him: "That depth of pathos, those outwelling sympathies, never at ebb; that ever opening heartache for the wronged; that moral courage, which always dared, yet never knew it dared; all these, with a kindred host, came thronging around me, at the thought of Alvan Stewart."

In an obituary notice, written by one familiar with his career, it was said, "He was among the earliest, and certainly among the ablest supporters of the temperance cause. He espoused these enterprises when it cost something to make the sacrifice. With no earthly or time-serving motive to gratify, while to

'entirely refrain' from the agitation of unpopular subjects, would have saved him from a world of odium and malignant misrepresentations, he obeyed the convictions of his inner man, threw himself into the breach, giving to persecuted reform the support of his superior talent and influence."

His form was tall, well proportioned, and commanding; his eyes, large and hazel, would, while speaking, often dilate with a sort of electric expression. His manner was impressive, solemn, and self-possessed; while his audience would frequently be convulsed with laughter at some sally of wit—but such laughter seemed to intensify the solemnity of his countenance.

This contrast between the unrelaxed sobriety of the speaker, and the uncontrollable merriment of his hearers, augmented the effect three-fold.

Frequently, not only in his speeches, but even in his conversation, his emotions would so overmaster him, as to find expression in an outflow of tears. Notwithstanding the harshness and extravagance which occasionally occur in his speeches, almost everything he said had spirit, originality, power, and pathos. No splendid but unmeaning accumulation of phrases, no rhetorical, tawdry, or habitual expletives, marred the chaste beauty of his language.

At times, his powers of description reached even the grand and sublime, producing pictures as vivid as those drawn by the pencil of Rembrandt or Reuben. An instance of this occurs in his argument before the Supreme Court of New Jersey, already referred to.

"Warning after warning, miracle after miracle, had been lost upon the obduracy of Egypt's king. One morning, as the population of that kingdom of fifteen millions of people arose and looked at their beloved Nile, lo! and behold, it was one vast river of blood, from the cataracts where its tumbling torrents of blood fell in mighty roar, and pursued their sweeping course, for six hundred miles to its seven

mouths, where the Mediteranean, receiving its tribute from its servant, blushed for twenty leagues at Pharaoh's impudence. The stranger from afar, the trader, seekers of knowledge, and the citizens, stood, that livelong day, and wondered at the bloody Nile: and as reasons were asked and given, I think I hear them say, the reason why the Nile runs blood is that Pharaoh holds the Hebrews as slaves, and the Hebrew's God demands their release, and shows his anger and his power at Pharaoh's refusal. The stranger would carry this news to the utmost bounds of living men, saying, one entire day, I saw the Nile run blood, to express the abhorrence of the Hebrew's God against the crime of slavery. . . . .

"On a certain other day the obstinate Pharaoh refused, after many promises, to let the poor Hebrew slave go free. It is noon; the burning power of a June sun strikes the land; anon, all eyes in Egypt are directed to a black and threatening cloud, rising out of the west over the Lybian desert. This was the first thunder storm in Egypt. . . . It skirts the western heavens, and the terrific clouds raise themselves higher and higher; men turn pale; anon the low and solemn tones of thunder are heard; men tremble and say it is the voice of the slave's God—in a moment, the flashes of forked lightning play with infinite quickness; men fall on their knees, and declare it is the flashing of the angry eyes of the Hebrews' God at the Egyptian cruelties. The clouds rise to the high altitude of noon; the lightning, the winds and roaring thunder, send consternation into the hearts of affrighted men. It appears like night, nature in agony, men fear to speak, and believe they are on the eve of doom; men and beasts hide themselves in extreme terror; the thunder makes the earth tremble from pole to pole; the pyramids rock from their deep foundations, the rains descend, the hail beats the earth, fire and ice leap from the clouds, while the lightning strikes down the trees, plays around the

pryamid tops, smites the sphinx, and runs along upon the ground, men in agony praying for deliverance. Pharaoh and his court lie prostrate in his palace, the earth seems shaken out of its place, and all nature in convulsions. The king implores mercy, and the Father of All hears, pities, and delivers the faithless king and people, and ere the sun went down, that storm and desolation had forever gone by, and the last cloud sunk below the horizon in the Red sea, while the beautiful sun rolls down the western heavens, smiling in mercy from beyond the dark solitudes of the interminable Lybian sands. This storm, all men knew, was an evidence of God's displeasure at slavery. But Pharaoh would not let the people go.

"It is in Egypt, and it is midnight, when the young wife, but two years married, awoke and placed her hand on the shoulder of her youthful husband; he was as cold as marble, he would not awake at her mournful cry—he was dead; he was the first born of his parents. She arose in wild despair, she lit a flambeau, looked at her little babe on the mattrass; the fixed smile was there, rigid in death, never to be relaxed; *he* was the first born of his parents; she flies to her father's and mother's bed in the next room; she awakes her father, but none but the archangel can awake her mother from death's sleep most profound; she was the first born of her parents. She sends her man servant to her neighbors for help in this awful hour; the servant enters the neighbor's; a light is there waiting and horror meets him. . . . . One sixth of the people, or a life of one of Egypt's slaveholders, had been taken for each slave detained."

How terrible, and yet how truthful is this picture! It is drawn with a fearless and bold hand—the hand of a master. Imagination kindles with the almost painful richness of its figures. In its background are shadowed forth the fearful scenes which accompanied the freedom of the American slave.

There was a painting in the gallery of one of the dukes of Orléans, representing the infant Moses about to be exposed by his mother to the waters and the monsters of the Nile. The figures were painted with extreme beauty and force. The face of the mother averted in agony, speaking in all the eloquence of grief, the terrible necessity which impels her to the act; the departing father, with eyes upturned to heaven, as if supplicating its aid for the darling—the helpless boy who clings to him in terror. All this strikes the beholder with horror and sadness.

It is said that in this absorption of human interest, the exquisite background of the picture, with its wooded scenery and architectural magnificence, is forgotten. Nothing is observed but the thrilling scene in the foreground. So it was with the scene drawn by Alvan Stewart, as he stood in the Supreme Court of New Jersey; the interest in the background was unobserved, but its portentous meaning was there, and has since been fearfully exhibited.

With singular versatility Mr. Stewart could pass with equal facility to gentler scenes—to those affections which spread beyond ourselves, and stretch into eternity, which develop the divinity within us—to the themes which religion unfolds—to the joys of friendship—to all the sweets of domestic life. His conversation was as remarkable as his speeches—fresh, original, and instructive—gathering brightness from every subject.

He loved his profession to the last, and he regarded his professional brethren with peculiar affection. This was attested in the beautiful eulogy which he pronounced on that great and distinguished lawyer, Elisha Williams, at a meeting of the bar at Utica, in July, 1833:

"What court-house in the State," said Mr. Stewart, "has not been the theater of his exploits and scene of his glory? How many thousand auditors have hung upon his accents in breathless silence,

listening to the impassioned eloquence of this intellectual giant. But Death, the great leveler, has forever silenced that tongue which uttered the most unrivaled eloquence—that man who was but yesterday, as it were, a connecting link between angels and men, is now in the low, dark sepulcher of death, a prey to noiseless worms. But the friends of religion will rejoice to know that, some years ago, he submitted his heart to the divine influence of our most holy religion, and that he died in the triumphs of its glorious faith. Star after star, that has shed luster upon our profession, is setting in death. May we all so live, that we shall meet at the great bar where the Judge of earth and heaven shall gather us to part no more."

The deep earnestness of Mr. Stewart's nature, the loftiness with which he moved in a sphere where there were few applauding voices, and the calmness with which he accepted a position that brought upon him scorn and anathema, rendered him a hero; and it is no affectation to say, that he was a man of genius, of fine sense, a powerful orator, and a philanthropist. He was deeply enthusiastic on one subject; but his enthusiasm was aroused by what he conceived to be a mighty evil, and, regardless of public opinion, he made eternal war against it. Forgetful of the clamors of party—of the reproaches of the softly conservative—of the frowns of "little great men," he appealed to philanthropy—to the enlightened judgment of mankind—to the future. Has the time for an impartial decision arrived?

JAMES T. BRADY.

The Practice of Law Before Juries.—The Many Colors of Life which it Presents.—The Triumphs and Contests of the Advocate.—His Relation to his Client.—The Remark made of a Great British Advocate Applies to James T. Brady.—He won his Fame at the Bar.—His Honors Unmingled with Political Distinctions.—His Life and Career an Example for the American Law Student.—His Birthplace.—Early Education.—A son of Thomas S. Brady.—His Mother.—Character and Accomplishments of his Father.—James and Others are his Pupils in the Study of the Classics.—James Studies Law with his Father.—His Admission to the Bar.—His Early Practice.—A Singular and Touching Case.—Brady Engages in it.—The Brother and Sister.—The Bond Servant.—The Habeas Corpus.—John Slosson.—The Trial.—The Triumph.—Brady is Appointed Corporation Attorney.—City Litigation.—Manner of Conducting it.—Appointed Temporary District-Attorney.—Trial of the Boat Thieves.—Brady's Disposal of the Case.—Himself and the Judge Equally Guilty.—Brady one of the Counsel in the Sickles Case.—His Duties on the Trial.—The Cross-Examination.—Anecdote.—The Trial of the Irishman for Murder.—Brady's Description of it.—The Case of Huntington.—The Plea of Moral Insanity, cases of.—The Cole-Hiscock Case.—Reflection on its Result.—Other Criminal Cases.—The Forrest Divorce Case.—Mr. O'Conor.—John Van Buren.—Mr. Brady Engages in the Argument in the Court of Appeals.—Character of his Argument.—Mr. Brady's Literary Taste and Acquirements.—Is Gravity Wisdom?—Brady a Patron of the Drama.—His Letter on Dramatic Writers.—His Position in Politics.—His Idea of Washington Politicians.—His Mission to New Orleans.—Baldy Smith.—Mr. Brady as a Political Writer and Speaker.—Always fit for the Occasion.—Anecdote of Mr. Marsh.—Brady is Counsel for the Savannah Privateers.—Jefferson Davis.—The Circumstance Related by Charles O'Conor.—Brady's Friendship and Characteristics.—James W. Gerard.—Banquet to.—Mr. Brady's Last Public Speech.—His Last Professional Engagements.—His Death.

IT has been said that there is no section of the world's hopes and struggles which is replete with so much animation of contest, such frequent recurrence of triumphant results, as the practice of the law before juries;—that the grotesque and passionate forms of many colored life with which the advocate becomes familiar; the truth stranger than fiction of which he is the depository; the multitude of human affections and fortunes of which he becomes, in turn, not only the representative, but the sharer; passions for the hour, even as those who have the deepest stake in the

issue;—render his professional life almost like a dazzling chimera—a waking dream;—and moreover that to him are presented those aspects of the case which it wears to the party who seeks his aid. Is the rule of law, too, probably against him? There are reasons which cannot be explained to the court, but which are the counsel's in private, why in this instance, to relax or evade it, will be to obtain substantial justice. In the majority of cases, he becomes, therefore, always a jealous, often a passionate partizan; lives in the life of every cause (often the most momentous part of his client's life); "burns with one love, with one resentment glows," and never ceases to hope, to struggle, or to complain, until the next cause is called, and he is involved in a new world of circumstance, passion and affection. Nor let us forget that at one time the honor of a man's life may tremble in his hands—he may be the last prop of sinking hope to the guilty, or the sole refuge clasped by the innocent; or, called on to defend the subject against the power of a State prosecution. Sometimes piercing the darkness of time, guided by mouldering characters and names; or tracing out the fibers of old relationship—exploring dim monuments, and forgotten tombs, retracing with anxious gaze those paths of common life, which have been so lightly trodden, as to retain faint impressions of the passenger. One day he may touch the heart with sympathy for the "pangs of despised love," or glow indignant at the violation of friendship; the next, he may implore commiseration for human frailty, and talk of nothing but charity and forgiveness.

It was said of a great British advocate, that in such a sphere as this, he moved triumphant.

It was in such a sphere as this, that James T. Brady moved and won his fame—a fame unmingled with political honors or official distinctions. His career depended upon no ephemeral titles—no loud

plaudit to the politician, who to-day mounts ambition's pedestal, to be sought for in vain to-morrow.

It is a pleasure to the lawyer who loves his profession—it must be pleasant to any man interested in the triumph of the intellect, to study the character of a man like Mr. Brady. What a commentary is his life and career for the student—for the young practitioner. He asked nothing from influence, from eminent friends — nothing from adventitious circumstances. With self-reliance—with industry, erudition, activity, and an untarnished name—surrounded by the great lawyers of a metropolis, he demanded the honors and emoluments of his profession — he reached for the highest prize—contended for it against the most gifted competitors, and won it amid the sharpest collisions.

He relieved the tedium of his professional labors, by entering the quiet domain of literature, refreshing his intellect—refining his views of life, keeping unquenched the enthusiasm which warmed the spring time of his life, over the pages of Tacitus, Livy, Thucydides, Pope, Shakespeare, and Tasso.

If his oratory carried conviction—if it caused men to act and think, his pen gave calmer reasons for thought, action, and depth of comprehension.

James T. Brady was born in the city of New York, April 9th, 1815. His parents were both from Ireland; they emigrated to this country, in the year 1812, settling in Newark, New Jersey; in 1814, they removed to the city of New York, which became their residence for life. His father was the late Thomas J. Brady, a gentleman of refinement and culture, who was noted for his extensive intellectual acquirements; being regarded as one of the most accomplished scholars in the city.

"His mother exercised a deep influence upon his character; she was noble and handsome in person, having a fine native intellect. She was a mother clothed in those nameless maternal graces, and possessing those quiet virtues which shed their hallowed

influence over families, and which is felt so long. She died when he was quite young; but he never during life, loved a human being as he loved her. Her name was never mentioned in his presence, without giving rise to some expression, the depth and tenderness of which, showed how her memory was embalmed, and rarely without the tears coming into his eyes."

His father, though born and educated in Ireland, spoke both the Spanish and French languages with fluency and grace. He wrote the latter with the ease and elegance of his vernacular idiom; while he was perfectly familiar with the ancient and the English classics.

Having completed his education, he decided to enter the legal profession, but he did not commence his studies until after he became a resident of New York, when he entered the office of the late John S. Riker, an eminent member of the New York bar, and a brother of Richard Riker, who, for a long time, discharged with great ability, the duties of recorder of the city of New York.

The accomplishments of Mr. Brady were so thoroughly appreciated, that he was induced by several distinguished citizens of New York, to prepare a limited number of young gentlemen for college. In this sphere he was very successful. Many young men who afterwards attained positions of eminence, pursued their preparatory studies with him, among whom was Bishop McCloskey. After his admission to the bar, he gained a very respectable position in his profession, and was the incumbent of several important and responsible offices. The present Judge John R. Brady, of the Supreme Court, was one of his sons.

While James was very young, his father commenced superintending his education, with such success, that, though he never had any other instructor in the classics, which by the custom of England is called learning, he was inferior to few professed scholars; his attainments were solid and practical.

He very early adopted the study of law, as a regular branch of his education. In this way he became master of the great elemental writers; in this way he laid the foundation of his legal education, broad and deep.

His father believed that a science which distinguishes between the right and wrong, which teaches to establish the one, and prevent, punish, or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart, should be thoroughly studied by all who desire a finished and liberal education.

The elder Brady taught his son that laborious study and diligent observation of the world, are both indispensable to the lawyer.

"James," said he, one day, "the study of law is like scaling the Alps—you must adopt the indomitable energy of Hannibal, and your ascent will be easy; of all things beware of half knowledge—it begets pedantry and conceit; it is what the poet meant when he said,

" 'A little learning is a dangerous thing.'

"Make your learning practical, for a bookworm is a mere driveler—a gossamer. There is a deal of legal learning that is dry, cold, dark, revolting; but it is an old feudal castle, in perfect preservation, which the legal architect who aspires to the first honors of his profession, will delight to explore, and learn all the uses to which the various parts are to be put, and thus he will better understand and relish the progressive improvements of the science in modern times."

With such familiar conversation as this, Mr. Brady implanted in the mind of his son, the great principles of jurisprudence. Who that has seen James T. Brady at the bar,—listened to those perfect and complete arguments which he made there, saw

with what facility he comprehended and unraveled the intricacy of conflicting precedents, "disentangled doubt, and exposed sophistry," but understood that he lingered long and patiently in the old feudal castle, and became familiar with its grand old architecture.

As a student, he was so modest and retiring, that his capacity was often underrated.

Mr. O'Conor once said of him, "To some extent, I performed the office of assistant counsel to his father; I often conferred with that father near the desk where sat his son James—ever commended by him as the hope of the family. The modesty and silence of the youthful student seemed to require some such patronage; for so marked were they, that notwithstanding the graces of his figure, which were great even then, and the gravity, sobriety, and good sense, which beamed forth from his countenance, his demeanor might well lead a hurried observer, such as I was, to pronounce him not promising."

Mr. Brady was called to the bar in October, 1836; he immediately opened an office in New York, and commenced practice. He directed all the powerful energies of his character to his profession, and without parade, without anything to catch the public favor, except his unwearied devotion to business, and those shining qualities which he exhibited, he rapidly gained the confidence of the people.

He had been at the bar but a little over a year, when one day a decently dressed, intelligent appearing young man, apparently about twenty-two years of age, came into his office, and inquired if Mr. Brady was in.

"I am Mr. Brady," was the reply.

"Well, Mr. Brady, I have been directed to come to you. I am in very, very great trouble, and I need a friend."

"Do you need a friend or a lawyer?" asked Mr. Brady.

"I need a lawyer, sir; one that will feel for me and

my poor little sister," said the young man, bursting into tears. "I am a stranger in this country, sir," he continued; "only six weeks yesterday I landed here from England."

"What is your name? and what do you want me to do for you?"

"My name is James Coppin, sir, and I want you to help me get my sister. She's a slave! a slave! sir, over in Williamsburgh."

"A slave? she cannot be a slave; there are no slaves at Williamsburgh," said Mr. Brady.

"Yes, sir, she is a slave; she is bound to a man by the name of Gatewood—a rich man, sir—until she is of age. I have searched for her a long time, and yesterday I found her, and I wanted to take her with me back to England; but the man drove me away, and threatened to arrest me and send me to prison, if I attempt to take my sister away from him. He says he owns her, and has got her bound to him, by some men that have something to do with poor people."

Mr. Brady had now become interested in the young man, and he drew from him a story which was indeed, romance in real life.

In the summer of 1837, the father and mother of young Coppin, with two sisters, younger than himself, embarked from Liverpool for New York, with the intention of emigrating to one of the western States, leaving James in England, where he was engaged in some business. During the voyage, the father, mother, and eldest daughter, sickened and died of a disease resembling ship fever. After the usual quarantine, the youngest daughter, then about fourteen years of age, landed in New York without a friend or guardian, except a young Englishman and his wife, neighbors of his father, who were also emigrating west. The Coppins had an acquaintance in Brooklyn; thither the young Englishman conducted the girl, but the friend had left to be absent two or three months. As the girl desired to return to England, the Englishman

engaged a boarding place for her, until she could hear from her brother, or make arrangements to return to her native country. Leaving with her a considerable sum of money, which her father had left her, he pursued his journey westward. The family with whom she was left, soon robbed her of all her money, and then turned her into the streets, friendless and penniless, directing her to the overseers of the poor. From the representations of this family, they believed her to be a pauper; she was taken up as such; the superintendents of the poor for the county of Kings, instead of taking her to the county poor house, observing that she was a bright, intelligent child, under the statute relating to paupers, bound her to a man by the name of Gatewood, residing at Williamsburgh. In her new home she was cruelly neglected, and subjected to many hardships. It was a part of her duty to take care of three young and troublesome children, and her days passed wearily and sadly on in drudgery and sorrow.

At length the brother learned that his parents and sister were dead, and immediately came to New York in search of the surviving sister. Through streets and lanes—in the homes of the wealthy—in the abodes of poverty, he sought her with unceasing perseverance; he advertised for her—he obtained the aid of the police, but days and weeks passed away, without the least intelligence of the lost one. At length, wearied and discouraged with his toilsome, fruitless search, he was on the point of returning to England without her, when, one day as he was passing the Howard House, in Broadway, a small child ran out of the front door on to the walk, pursued by a girl apparently about thirteen years of age; catching the child in her arms, she ran with it into the hotel. As she turned to enter the house, Coppin caught sight of her face, and he saw that his sister was before him. Rushing after her, he followed her up a flight of stairs, into a room where there were a gentleman and two

ladies; regardless of their presence, he seized his sister in his arms, exclaiming:

"Sarah! Sarah! is it you? have I found you at last?"

The poor girl screamed with fright, and the gentleman endeavored to take her from the strange intruder; but he only held her the more closely. When she ascertained that it was her brother who had thus suddenly appeared, her joy knew no bounds. She laughed and wept. She laid her head on his breast, and sobbed:

"Oh, James, James! you have come to take me with you; I know you have. Oh, do take me with you—with you, James."

"Yes, yes, Sarah; you may go with me now," said he, and the child sprang for her bonnet.

"Stop!" said the man, "you can't go with him; you must stay with me."

"She is my sister, sir, and she must go with me; I have been searching for her with a broken heart, and my eyes dimned with tears, for weeks; and you will not part us now. So come with me," said James, taking the hand of his sister.

"Stop! I tell you," said the man. "This girl is my servant, my servant. You have nothing to do with her. Leave the room immediately, or I will call the police and have you arrested."

"Oh, sir! she is my sister, my darling little sister; we are orphans in the world. Our parents and another sister died on their passage to America, and this poor lamb, that we were all so tender of and loved so well, has been lost—lost to me, sir, until now. Now I have found her, she is all I have got to love or care for in the world. You cannot keep her, for she is the daughter of as honest a man as ever breathed in Old England," said Coppin.

"I'll show whether I can keep her or not," said the man, ringing the bell. A servant appeared, and with his help, poor James was forcibly ejected from

the room. But having found his sister, he was determined never to leave her.

He learned that the name of the man with whom she lived, was Gatewood—that he resided at Williamsburgh—that he had been traveling with his family and was returning home, stopping in New York for a few hours.

The next day, Coppin visited Williamsburgh, and after much entreaty, Gatewood permitted him to see his sister for a few moments, in his presence. Here he learned that she was indeed bound to him by written indentures until she was eighteen years of age, and that he was determined to keep her. He was a sullen, determined, obstinate man, with whom entreaty or negotiation was useless. Nothing could exceed the agony of poor Coppin, on learning that his sister was, as he believed, a slave. Determined, however, to effect her release, if possible, he returned to New York, inquired of an Englishman whose acquaintance he had made, for a good lawyer, and he was directed to Mr. Brady.

The rehearsal of this story, in the simple, touching language of young Coppin, frequently interrupted by his grief, aroused all the warm sympathies of Brady's nature, and he promised his client that he would take immediate action in the matter, and he redeemed his promise.

He learned that the superintendents had bound Sarah in the usual indentures, under section 5, chapter 8, volume 2 of the Revised Statutes; and that they were in due form of law; but, on a full investigation of all the circumstances of the case, he believed that the whole proceedings were illegal, and he caused the girl to be brought up on a writ of *habeas corpus* before Hon. Nathan B. Morse, then first judge of Kings county.

The superintendents, anxious to sustain their official acts, prepared to defend Gatewood to the last. The late John Slosson, an eminent lawyer of the New

York bar, was retained by them, and a return to the writ was made, stating that Sarah Coppin was held by Gatewood as his servant or apprentice, under certain indentures executed by the superintendents of the county of Kings to him, "the said Sarah being, at the date of said indentures, a pauper."

The hearing of the case took place on a day fixed for that purpose, before Judge Morse, at the court house in Brooklyn. The singular and interesting character of the case gave it much publicity. It was reported in the daily papers, and, on the trial, the court house was thronged with deeply interested spectators.

The young lawyer appeared with his brief, and his authorities; by his side sat young Coppin and his sister. It was an important event in the professional career of Brady. He stood between the poor young girl and a doom next to death. It was a case of the heart,—it lay warm in the deep sympathies of his nature,—it kindled those generous emotions which through his whole professional life so often manifested themselves. Then there was professional ambition; a case which involved the most important interests to his client,—a competitor of the highest reputation,—eminent at the bar, and in intellectual acquirements,—a vast audience, composed of many of the most eminent persons in New York and Brooklyn. In his whole future brilliant career at the bar, no case so completely absorbed all his energies as this did.

He opened it with modesty and brevity, simply stating what he proposed to prove in avoidance of the indentures. When he closed his opening, Mr. Slosson arose, and asked the court to remand Sarah Coppin to the care of her master, Mr. Gatewood; that the indentures, on their face, were legal, and, therefore, conclusive in and of themselves; that the court would not go behind them to ascertain the circumstances under which they were executed. He

made a strong and effective argument; such an argument as John Slosson was capable of making.

But Brady was prepared on this point; he had entrenched himself with all the law bearing on the point which he could find, and, after elaborate arguments, the court decided to allow him to introduce his evidence.

It has been said that a trial of an issue of fact is not a hearing of all the matters capable of discovery, which are relevant to the issue, or which would assist an impartial mind in forming a just decision; that it is an artificial mode of determination, bounded by narrow limits, governed by inflexible rules, and allowing each party to present to the court as much or as little of his own case as he pleases; that besides the opportunity which the forms and mode of trial give to the exercise of skill, the laws of evidence afford still greater play for ingenuity, and ground for caution.

In a field like this, young Brady had now entered to contend alone with one who was perfectly familiar with all these subtleties.

He proved by the keeper of the county poor-house that Sarah had never been an inmate of that institution. He established, by the overseer of the poor of Brooklyn, the fact that he had never, in any way, assisted her. With this, and some other proof, he rested his case.

To substantiate the fact that Sarah was a pauper when the indentures were executed, Mr. Slosson called the man and woman with whom the young Englishman left Sarah. They testified that in a day or two after her friend left, they discovered that she had no money, and, being unable to keep her, they sent her away, and afterwards directed the overseers of the poor to take care of her.

On cross-examination, while he did not exhibit "the talismanic power of bringing falsehood out of truth," he established the force of the Bible adage,

"Be sure that your sins will find you out,"—for he compelled the man to admit that when Sarah came to his house she had a considerable sum of money in gold, though he denied having any of it himself, or any knowledge as to what became of it; such was the searching nature of Mr. Brady's questions that suspicion of his having taken it was strongly fastened upon him.

At length the evidence was closed; Mr. Slosson contended to the court, with great force and ingenuity, that there was nothing in the evidence showing that Sarah Coppin should be discharged from the indentures. She was, in every sense of the word, a pauper when they were executed; and if she had not received actual aid from the poor authorities, she was in a situation to become chargeable to the county. Within the meaning of the statute, that word "chargeable," used in the statute, meant a liability of her becoming chargeable, which was analogous to the condition of a putative father in an order of filiation. The public policy, and the due administration of the poor laws, demanded that the indentures should be sustained, and the girl remanded. Finally, his whole argument exhibited the profound and experienced lawyer, carrying with it such weight that many members of the bar who were present, believed that though sympathy was with Brady, the law was against him.

When Mr. Slosson closed, the young lawyer arose; this was his first attempt to address the court on an important occasion, and he began with hesitation and diffidence, which caused much uneasiness on the part of his friends; but "the low tremulous beginning gave way to the gradually strengthening assurance, to the dawning recognition of sympathy excited in the man on whose lips the issue hung; till the whole world of thought and feeling seemed to open full of irresistible argument and happy illustration." At times the sympathy of his nature triumphed over

cold logic, and his powerful appeals swept over court and audience, as it did years after, in his defense of Daniel E. Sickles.

The death of the parents,—the landing of the poor orphan on our shores—her robbery—her desertion, her misery—the brother's pilgrimage across the Atlantic—his long, weary, search in the bitterness of an almost broken heart—the providential meeting—the awakening to the sense that the moment when fortune had seemingly given the lost one to him, she was in a bondage which must separate them forever; was portrayed in language which produced uncontrollable emotions of sympathy.

That part of his speech in which he discussed the legal points of the case, was equally happy. He contended that the proof established the fact, that Sarah Coppin had never received the least assistance from the overseers of the poor, had never been in the county poor-house, and had never been chargeable in any way to the county, when the indentures of the superintendents were executed; and therefore they had no jurisdiction or authority over her person. He denounced the system which thus permitted officials to dispose of the person of the poor, and contended that before it could be done, every intendment of the law should be strictly complied with. Finally, he insisted that the opinion of Judge Yates, in the well known case of Schemerhorn *v.* Hull, 13 *Johns.*, 269, fully sustained his first proposition, that before the superintendents had any authority to execute the indentures, Sarah should have been reduced to the condition of a pauper, having received assistance from the poor authorities.

The judge sustained Mr. Brady in his views of the law and the facts in the case, and Sarah Coppin was delivered into the custody of her brother.

The manner in which Mr. Brady conducted this case, and its successful result, gave him a conspicuous

position before the public, and established his reputation as an advocate.

Much of his practice was confined to criminal law, although he did not devote his entire attention to that branch of his profession.

Criminal law practice is peculiarly attractive to sympathetic and active minds; it gives ample room for the exercise of genius—that quality without which judgment is cold and knowledge inert—that energy which collects, combines, amplifies, and animates. It demands a close and critical knowledge of the common and statute law—an intimate acquaintance with the rules of evidence. The sweeping innovations which the Code has made in the civil law of our State, have left the nice technicalities of the criminal law. No advocate can attain eminence as a criminal lawyer, who is not thoroughly, accurately, and deeply read.

In the year 1843, during the temporary absence of Mathew C. Patterson, Esq., then District-Attorney of New York, Mr. Brady was appointed to act in his place. While discharging the duties of this office, an incident occurred which illustrates the character of the latter.

Among the indictments which it became his duty to try, was one against two boys, charged with larceny in stealing a row-boat. The owner, for some reason, strongly desired the conviction of the youthful culprits. They belonged to respectable parents, and the serious appearance of the case, caused them the greatest distress.

On the trial, Mr. Brady thoroughly sifted the evi dence, and closely dissected the whole case on the part of the people. It turned out, that the young prisoners had merely taken the boat for the purpose of crossing the East river, to visit an orchard on the Long Island shore, where large quantities of luscious apples hung temptingly from the trees. Mr. Brady was convinced that, though the act might possibly amount to a technical larceny, the boys did not intend to steal the

boat. Therefore, on resting the case for the people, he addressed the court as follows:

"This offense, your honor, if it be an offense at all, is one of which most men, or, I should say boys, in the course of their lives, have been more or less guilty. It commenced at a very early period in the world's history, in a very luxuriant garden, and has been continued down to the present time. These boys, your honor, are guilty of nothing more criminal than you and I have been engaged in a hundred times, and, therefore, with your consent, I will enter a *nolle prosequi* to this indictment."

The court consented, and the boys were discharged. They grew to great respectability, and ranked among the prominent business men of the city. What would have been their condition in life, had they been convicted and imprisoned? Their association with thieves, robbers, and wretches of all kinds, would have alienated them from virtue, and they would probably have left their captivity, to enter on the practice of that depravity which they had learned in prison.

In the year 1845, Mr. Brady was appointed corporation attorney for the city of New York; his powers, his acquisitions, and his temperament, peculiarly qualified him for the discharge of the duties of this office, and when his term expired he was reappointed. On entering upon the duties of this office, he found the corporation engaged in several intricate and important actions. Suits had been brought for and against it. His learned and able predecessor had left them in a condition which gave Mr. Brady no trouble to prepare for trial. Several of them were tried, and all, excepting one, resulted in his favor. He brought to the trial of these causes, great vigor and grasp of thought; his plan and outline were marked by great distinctness, and he filled them up with surpassing ingenuity. At the bar, his case would often be apparently shattered by the opposing counsel, "but he would gather it up, condense and correct it." Like

a skillful general, he would place himself with great facility, on the vantage ground of the contest. "He never betrayed anxiety in the crisis of a cause, but instantly decided among complicated difficulties. He could bridge over a nonsuit with insignificant facts, and tread upon the gulf, steadily, but warily to the end."

In many phases of his character he resembled Henry Cockburn. Like that great lawyer, once the pride of the Scottish bar, Mr. Brady, while he could assume any mood, and sympathise with all, was master alike of the stern and the pathetic. His flow of good humor was never failing, and neither care nor anxiety could quench it. He had high thoughts, noble ambition, and deep reflection on men and things.

When Daniel E. Sickles, in his prison at Washington, after the assassination of Francis Barton Key, was planning his defense, and glancing over the names of the great lawyers of the nation, to ascertain which would be most successful for him, he selected Mr. Brady as the associate of Stanton, Graham, Bradley, and Cagger.

The opening argument for the defense was made by John Graham. It was as brilliant and logical as it was successful; it blended, in the happiest manner, reason with heart-searching pathos. At the request of his eminent associates, Mr. Brady made the opening statement of the defense to the jury. He discharged this important duty with great ability and ingenuity, proving the truth of Lord Brougham's remark, that a skillful statement of the case to the jury, by an advocate who has a vivid perception of the true relations of things, is a most powerful means of success, and cannot be easily overdone.

"I shall, gentlemen," said Mr. Brady, "prove to you circumstances which, for a hundred years past, have been regarded as a justifiable retribution for domestic peace destroyed, for hopes blasted, home desecrated—all that the heart has garnered up as its last, its only

solace, withered by some brilliant and insidious seducer, whom the arm of the law cannot reach."

On Mr. Brady devolved the duty of examining the witnesses for the defense, and cross-examining those for the prosecution. This, under the circumstances, was one of the most delicate and difficult tasks ever committed to a lawyer; for the acquittal of Sickles depended on the fact, that in the case of two important witnesses for the defense, he was obliged to conduct the examination so as to leave no opportunity to re-cross-examine them on the ground that new matter had been introduced; he was thus compelled to keep something concealed, and yet bring out certain facts intimately connected with this, in order to obtain a verdict of not guilty for the prisoner.

A successful cross-examination is one of the most difficult and important duties which an advocate can perform; it requires a knowledge of human nature—of the springs of human action—a subtle and nice discrimination. "When it is not founded on materials of contradiction, or directed to obtain some information which the witness will be willing to give, it proceeds on the assumption that the party interrogated has sworn an untruth, which he may be induced to vary." But it is often the means by which trustworthy evidence is mischievously weakened or set entirely aside.

An eminent instance of this occurred on Lord Kenyon's cross-examination of a witness on the trial of Lord George Gordon. The witness testified that a certain flag was carried in a procession, when he was interrogated as follows:

Kenyon. "Can you describe the dress of this man you saw carrying a flag?"

A. "I cannot charge my memory; it was a dress not worth minding—a very common dress."

K. "Had he his own hair, or a wig?"

A. "If I recollect right, he had black hair; shortish hair, I think."

K. "Was there anything remarkable about his hair?"

A. "No; I do not remember anything remarkable; he was a coarse looking man; he appeared to me like a brewer's servant in his best clothes."

K. "How do you know a brewer's servant in his best clothes from any other man?"

A. "It is out of my power to describe him better than I do. He appeared to me to be such."

K. "I ask you by what means you distinguish a brewer's servant from any other man's?"

A. "There is something in a brewer's servant different from other men."

K. "Well, then, you can tell us how you distintinguish a brewer's servant from any other trade?"

A. "I think a brewer's servant's breeches, clothes, and stockings, have something very distinguishing."

K. "Tell me what in his breeches, and the cut of his coat and stockings it was by which you distinguished him?"

A. "I cannot swear to any particular mark."

This witness undoubtedly told the truth. Yet it is related that he was hooted from the witness box, as if he had sought to impose on the jury. Erskine, who was engaged with Kenyon in the case, in his address to the jury, adroitly took advantage of the temporary prejudice.

"You see," said he, "gentlemen, by what strange means villany is detected."

Lord Kenyon had been at the bar but a short time when that trial took place, and this cross-examination alone, established his reputation as an advocate.

In the defense of Sickles, Mr. Brady conducted the cross-examination with a scrutiny, skill, and penetration, which greatly strengthened his case, and weakened the force of the prosecution.

In the zenith of his professional fame, he once re-

lated, how in his student days, his young ambition was fired by witnessing Blunt and Hoffman defend a man charged with murder.

"Fortunately, or unfortunately," said he, "there was a throb of hope in my breast, that the time would come, when even so great and solemn a responsibility as that of defending a man whose life was in jeopardy should devolve upon me; the time at length arrived. It so happened that a poor Irishman was charged with the crime of murder. He was a humble person, with few friends and no money. Of his friends, the fondest, most devoted, and persevering, was a true-souled little woman, born like her husband, and my ancestors, in that beautiful country, on whose bosom so many generations of noble beings have laid themselves down in quiet repose. She sought my aid in the hour of peril to him she loved, and I could not refuse it. None of my profession would. But it was with fear and trembling that I undertook the duty. If I had known the future terror that it was to bring upon my heart and brain, I would have faltered long, ere I had engaged in the cause. If ambition alone had impelled me to the undertaking, I would have dashed that impulse to the ground, and smiled upon the fragments of its ruins.

"Without considering at large, how the fortunate result in that case was accomplished, I may say that, in a purely legal point of view, the act proved was in any of its aspects a clear case of murder. It had not that awful feature, however, in its *moral* bearings, and my aim was of course, to present, with whatever slender experience I possessed, all the extenuating circumstances that could be urged in behalf of the unhappy prisoner. I remember, with perfect distinctness, that on the eve of the trial, I walked homeward with the clerk of the court, and the then vigorous and effective district-attorney, who informed me that the guilt of the accused was so flagrant, that it would be his solemn duty to make all legitimate efforts to se-

cure his conviction. I leave my impressions, under the circumstances, to be estimated by those who have incurred an equal responsibility. Had I been obliged to undertake this defense, where I should not have received that kindness that was so delicately and thoughtfully extended to me in that court, I know not what the result would have been to me personally.

"If there is any thing in this life, that is dreadful to contemplate, it is the annihilation of the fondest hopes we hug to our bosom—the destruction of the means by which we strive to attain even temporary distinction, and the laceration of the heart, by which great disappointments affecting our destiny or prospects are sure to be attended.

"The trial proceeded; Judge William Kent presided. In its progress, it would seem that the jury were influenced, insensibly, by the exercise of that kindly nature which radiated its benignity on me, and then bestowing its beams and its fructifying influence on the jurors, disposed their minds in his behalf. The judge charged, and charged in a kindly spirit; but omitting no part of the duty exacted by the law, of which he was the exponent.

"The man was not convicted of murder, but of manslaughter. I can see the jury now, in that room in the City Hall—one of the apartments now occupied by that court over which my friend Judge Daly presides. I can see in that dimly lighted chamber, the prisoner, his frame heaving with convulsive sobs, and the handkerchief in which he buried his face, saturated with the perspiration which streamed forth in his agony. I can see, as they entered, the foreman, as he delivered the verdict that restored the trembling criminal to life and hope, and the mild approving look of the judge, as that verdict was announced. Above all, I can never forget the speechless joy of my client, and the features of his poor wife, imbued with the tenderness and fervor that inspires the humblest peasants that tread the green surface of that old land—never

shall I forget her, as she fell on her knees, and with clasped hands, and in a voice choking with emotion, breathed in low tones, a prayer for the eternal preservation of the judge who presided.

"Imagination need not carry us far to afford an assurance that the prayer of that poor woman, in that moment of heartfelt supplication and blessing, is even now pleading in behalf of our friend for the enjoyment of the infinite pleasures which crown a good life.

"My poor client was sent to State prison for a long term of years. His wife almost daily presented herself in my office to learn from me what could be done to effect his deliverance by a pardon. The time at last came when Judge Kent benevolently interfered, and the man was set free.

"There came a bright, sparkling, Christmas day, and on its glorious morning, the poor couple, with joyful and grateful hearts, wended their way to St. Patrick's Cathedral, and there, kneeling side by side, and joining in the solemn rites of that old faith made dear to me by so many sacred memories—the faith in which I live, and in which I mean to die—repeated with gratitude—with piety—with fervor, the prayer she before uttered from the depths of her pure and eloquent heart."

Such was the deep sympathy, such the generous motives which lived and had their being in the soul of James T. Brady; who can wonder that his faults are forgiven—nay, forgotten, when such sentiments were paramount in his mind. So were the dreams of his young ambition realized, and the humble student became the great and powerful advocate. But even in the day of his greatest triumph, he retained the verdure of his early imagination and sentiment; his heart was a sanctuary filled with lofty and pure thoughts. Is this too warm a panegyric? Let his professional brethren—let his thousand clients speak, and the coloring of the painting, if painting it is, will be deepened. Well has it been said, that foibles are

not inconsistent with generous and great qualities. Fools discover that frailty is not incompatible with great men; they wonder and despise; but the discerning find that greatness is not incompatible with frailty, and they admire and indulge.

At an early period of his life, Mr. Brady attained a position at the bar which gave him a choice in the retainers which were offered him, and, therefore, he was not often the conscious advocate of wrong.

At this period he labored as patiently and ardently, as in those years when he was unknown to fame. It has been said that immediate gifts of early praise fascinate and dazzle the mind so as to indispose it for patient labor. No such mental dissipation ever weakened the intellectual frame of Mr. Brady, though from a very early period he was accustomed to applause.

Among the important criminal cases in which he was engaged, was that of Huntington. The defendant was a young man of the highest respectability,—of great wealth—ardent and active in his nature; he participated in the wild speculations of Wall-street, unrestrained by caution and without the balance of moderation, or the interposition of caution, until visions of vast accumulations floated before his eyes, causing him to yield his entire faculties to the possessory desire, producing one of those instances of a disordered action of the principle of acquisitiveness described by Gall, Spurzheim, Guy, Rush, and others.

Under these circumstances, Mr. Brady interposed the plea of moral insanity—that plea which insists that persons who are the subjects of natural, or congenital moral derangement, are not morally accountable; as in the case of a female servant described by Ray, who could not help stealing secretly from her master, though she was intelligent, modest, and religious, and was all the time conscious of, and admitted the turpitude of her actions. She was placed in a hospital, as insane, and, after apparent restora-

tion and a long trial, again taken into service. Gradually, in spite of herself, the instinct again mastered her; and in the midst of incessant struggle between her vicious propensity on the one hand, and a conscientious horror of her condition on the other, she was suddenly attacked with mania and died in one of its paroxysms. And also the case related by Dr. Rush, in his Medical Inquiries, of a woman who was entirely exemplary in her conduct, except in one particular. "She could not refrain from *stealing*. What rendered this vice more remarkable was, that she was in easy circumstances and not addicted to extravagance in anything. Such was the propensity to this vice, that when she could lay her hands on nothing more valuable, she would often, at the table of a friend, fill her pockets secretly with bread. She both confessed and lamented her crime."

Mr. Brady contended that Huntington committed his crime under the influence of this species of insanity. If it was not the most successful, it certainly was one of the most brilliant defenses ever made at the New York bar. He exhibited a knowledge of psychology, or the science of the phenomena of the mind, truly wonderful. In his examination of the medical and scientific witnesses, a stranger might easily have mistaken him for one of the learned professors present, who, for the time being, had adopted the office of interrogator. Like Governor Seward, who interposed the plea of moral insanity in the great case of the People *v.* Wyatt, he often puzzled the wise, learned, and scientific men who appeared against his client, and which exhibited the depth and extent of his research.

But the plea of insanity is unpopular, it rests on so many subtleties—has so often been the subterfuge of the most hardened criminals, that it is difficult to make it available; and as has been well said by Professor Upham, "Many individuals, through a misunderstanding of moral insanity, have suffered under the hands of the executioner, who, on principles of re-

ligion and strict justice, should have been encircled only in the arms of compassion, long suffering, and charity."

Huntington was convicted and sentenced to State prison for a long term of years.

"Mr. Brady also defended McDonald, of Mobile, for killing Virginia Stewart, in Broadway; Jefferds, charged with the murder of Walton; Madame Restell, charged with producing an abortion—in the latter case, he was assisted by the late David Graham; the trial of Baker, for killing Poole; in this, the jury disagreed three times. At length, Mr. Brady, after a long contested motion, changed the venue from New York to Newburg, on the ground that in New York, public sentiment was so much against his client, as to preclude the possibility of his having a fair and impartial adjudication of the charge alleged against him. After the disagreement of the Newburg jury, the eminent and untiring counsel had the satisfaction of seeing Baker discharged on his own recognizance, a matter tantamount to an acquittal of the charge on which he was indicted.

"In the Kane arson case, there were two disagreements of the jury, and a final discharge of the prisoner; Jefferds, whom Mr. Brady defended, was acquitted of the murder of Walton; but subsequently, when tried for the killing of Mathews, he was convicted and sent to State prison.

"In the celebrated Gardner-Tyler will case, he won the suit for his client (Gardner), against the weight of evidence, notwithstanding the client of the opposing counsel was a lady, whose interests were defended by those eminent lawyers, Attorney-General Evarts and Edwards Pierrepont, Esq. It was on the very ground that the verdict of the jury was against the weight of evidence, that the court subsequently granted a new trial.

"Mr. Brady was one of the counsel in the celebrated Parish Will Case—a case so important that over

eighty days were spent in taking testimony. It occupied the attention of our State courts for long time; while many of the ablest lawyers of the city of New York were engaged in it. Messrs. Evarts and Cutting appeared for Mrs. Parish, and John W. Edmonds for the sisters, while O'Conor & Jordan were counsel for the brothers. The latter, however retired from the case, and Mr. Brady was retained in his place; and with Mr. O'Conor, conducted the argument for the brothers in the Surrogate's Court. The case was contested with unusual ability and learning through all the State courts, and was finally terminated in the Court of Appeals. A perusal of this singular case will be of great advantage to the legal student.

"He was engaged also as counsel for the respondents, in the argument before the Court of Appeals, some years ago, when the question of the constitutionality of the Metropolitan Police law was before that tribunal. This question was finally decided against him, and in affirmation of the new law.

"Nicholas Hill once declared that Mr. Brady's arguments gave him more trouble and annoyance, and caused him to study his cases more searchingly and closely than did those of any other lawyer against whom he had ever been pitted.

"In the year 1848, Mr. Brady was counsel for Hon. John C. Mather, State Canal Commissioner, who had been impeached for malfeasance in office, and although some of the ablest legal minds conducted the prosecution on the part of the State, he succeeded in acquitting his client. Mr. Brady will be remembered also as one of the counsel in the lengthy Erie Railroad litigation of last year. It was in an argument in one of the many suits growing out of that litigation, that he launched forth such eloquent and powerful invectives against a certain Supreme Court judge, and a referee before whom some of the suits were brought for investigation. The matter was much talked of at the time.

"The eminent advocate did not take every case that was offered him. He seemed to desire only those into which he could throw his whole soul and all the energy of his nature, and many were declined by him —sometimes because he did not choose to undergo the severe mental strain that conducting them would necessarily involve, and at others, because by undertaking them, he would become more or less involved in partisan issues. He was solicited to conduct the defense of John H. Surratt, for alleged complicity in the assassination of President Lincoln, but declined the offer. Both sides tried to retain him in the Fullerton case of recent date, the government offering him a fee of ten thousand dollars, but he refused to participate in it on either side. Mr. Brady entertained the very highest sense of professional honor. In illustration of this, it may be mentioned that after the election of his brother, Hon. John R. Brady, to a seat on the Common Pleas bench, he never would, under any consideration whatever, engage in any litigation before that court, although great pecuniary inducements were frequently held out to him to do so."

These were but a small number of the cases in which Mr. Brady was engaged; they were tried during the last fifteen years of his life, while very many cases, which occupied the attention of the public at the time of their trial have not been referred to. It is said that of all the persons whom he defended for capital offenses, only one suffered the extreme penalty of the law.

The last great criminal case in which he was engaged, was that of the People *v.* Cole, for killing Hiscock, a member of the late constitutional convention. That case is still fresh in the recollection of the public. It was, in some respects, like the case of Sickles, which virtually settled the doctrine that the aggrieved husband may lawfully kill, even though sufficient time has elapsed for passion to subside, after the discovery of the offense, or on the discovery of such

circumstances as render the commission of the crime morally certain.

The Cole-Hiscock case went a step further, and absolved the husband for slaying the supposed seducer of his wife, on her confession alone; while the principle established in the McFarland case went still further.

There are many serious considerations connected with this subject—considerations which admonish society that amid all the perfections of our laws, there is one point in which we have returned to that primitive state, where individuals take the law into their own hands,—redress their own wrongs, "with a red right hand," taking life on the busy street, in the crowded hotel, or wherever the avenger meets his victim. It is apparent that we are approaching a period when this practice must end, else other great offenses will be punished with impunity in the same bloody manner, "for there is already a frightful amount of mob spirit, even among intelligent, reasonable citizens."

Mr. Brady entered on the defense of General Cole, suffering under an indisposition which had existed for some time; but deeply sympathizing with his client, he forgot all personal disability, and with his eminent and learned colleagues made a successful and brilliant defense.

In this trial his mental and physical labors were so intense, that they accelerated the ravages of the disease which was preying upon him, and hastened his death.

But the great intellectual effort of Mr. Brady's professional career—the one that best exemplified his powers as a jurist, and the amplitude of his mind, was his argument made in the Forrest divorce case in the Court of Appeals. That case was first tried in the New York Superior Court in 1851, before Chief Justice Oakley. It was brought by Mrs. Forrest against her husband for a divorce on the ground of adultery;

for weeks it was stubbornly contested, inch by inch; attracting more interest than any civil suit which was ever before tried in the city.

Charles O'Conor conducted the case for Mrs. Forrest, and John Van Buren appeared as the champion for the great actor. There entered into the contest, all the unhappy dissensions which render the life of the parties "an age of years all winters." Criminations and recriminations gave the case a dramatic interest. But at length Mrs. Forrest succeeded against a turbulent and powerful defense. For Mr. O'Conor, it was a triumph seldom attained at the bar—for Mr. Van Buren, the misfortune of the defeat was obscured by the lustre of his brilliant defense, and the exhibition of those talents which rendered him a great and commanding lawyer. The case at last was appealed to the General Term, and at length reached the Court of Appeals, where Mr. Brady entered into the contest as the colleague of Mr. Van Buren; Mr. O'Conor appeared for Mrs. Forrest. The argument took place in December, 1862, and the Court of Appeals was the scene of legal contest seldom witnessed within its bar. It could hardly be otherwise, when two such gladiators as Charles O'Conor and James T. Brady were the chief contestants. To say that the argument of the former was able and eloquent, would be like saying of the sun, that it is bright. Mr. Brady's lost nothing in comparison with it. It may be proper, however, to add, that it dissipated the opinion that he was only great in criminal cases. Mr. O'Conor again succeeded, and after fifteen years the Forest divorce case was ended.

As has already been remarked, Mr. Brady was a lover of literature. In the midst of his most engrossing career, he found time to indulge his literary taste. He submitted to the most laborious and persevering process of private study; like De Witt Clinton, whatever he found worth reading once, with him, warranted a second perusal.

He believed that poetry, instead of being a dream of fairy land, was imbued with real life; that the themes of the poet were often the strongest verities, that he moralized in his exquisite imagery, and reasoned in song.

It is true that Shakespeare, Jeremy Taylor, Milton, Burke, and finally, the most gifted writers which the world has produced, possessed a luxuriant fancy which started forth, adorned, and beautified great philosophic truths. This is attested in the beautiful and sublime allegories of the Bible, in which a meaning, lofty and perspicuous, rises to the view; and hence, as Bishop Lowth has elegantly remarked: "The passion of jealousy, its causes, circumstances, its progress and effects, I hold to be more accurately, more copiously, more satisfactorily described in one of the dramas of Shakespeare, than in all the disputations of the schools of philosophy."

Among the table-books of Mr. Brady, were the works of Atterbury, Steele, Swift, Burke, Fenelon, Halifax, and Berkley. He drew down genius from its air-built citadel in books and libraries, and made it his playmate—his companion.

Like Talfourd, and many other great jurists and civilians of England and America, he committed his thoughts to paper, and his writings enriched the pages of several contemporary magazines and journals. His soft, copious, and harmonious style rendered him a favorite of the reading public. Nor was this all; he possessed eminent abilities as a successful lecturer, and he often appeared before the public in this character. Among the themes upon which he lectured, were "The Advocate—his Rights and Duties;" "The Law of Libel;" "The Anglo-Saxon Race;" "The Influence of Useful Inventions on Society;" "Ireland's Past and Future."

These lectures exhibited a cultivated, happy view, a shrewd and penetrating knowledge of his subject,

profound without pedantry, and elegant without extravagance.

This was his characteristic as a speaker at the bar, there he adapted himself to the strict rules of legal oratory; but even there, the richness of his intellect would occasionally flash out, and he would fasten a glittering diamond—a rich pearl of thought, on the coldest and most emotionless theme.

It has been said that gravity is the cloak of wisdom, that those who have nothing else, think it a fault to affect one without the other, because it destroys the only foundation on which their pretensions are built—that the earnest part of reason is dullness; and that the generality of the world are therefore concerned in discouraging any example of unnecessary brilliancy—that the two things do not live together. Edmund Burke did much to overthrow this idea; James T. Brady did more. He proved that gold is not the less valuable for being wrought into elegant shapes and richly embossed with curious figures; that the solidity of a building is not destroyed by adding to its beauty and ornament; that the strength of a man's understanding is not always to be estimated in proportion to his want of imagination. In his speeches and in his writings Mr. Brady showed

> "How charming is divine philosophy,
> Not harsh and crabbed, as dull fools suppose,
> But musical as Apollo's lute."

He was a lover and a patron of the legitimate drama,—not that sensational puerile drama, which runs wild after the most extravagant violation of all rules, and permits the strangest outrages on feelings and taste,—which brings the stage down from the world's epitome to the sphere which "no divine philosophy illumes."

His acquaintance with the writings of great dramatists was extensive. He read critically Æschylus, Sophocles, and Euripides, the three Greek dramatic

writers whom the Alexandrine critics regarded as the foundation of the Greek literature. He particularly admired the former, for the power in which he painted the passions; terror was his element, and in that he succeeded beyond any other writer, ancient or modern.

Mr. Brady, in writing to a friend on this subject, some years ago, said, "Perhaps no author blended the passions of pity and terror with more force and originality than Shakespeare—pity, not only for youth, innocence, nobility of character, and virtue, as in Imogene, Desdemona, Brutus, Coriolanus,—or for insignificant persons, like the Duke of Clarence, or profligate and worthless ones like Cardinal Wolsey, —terror in all its forms, from the madness of Lear, and the ghost of Hamlet, up to the dreams of Richard, and Lady Macbeth. But perhaps the most miraculous of all his representations are those in which he has portrayed the wanderings of a disordered intellect, and especially that species of distraction which arises from the excess of sorrow."

Mr. Brady was for many years president of the American Dramatic Fund Association, with the original formation of which he was connected. There are many instances of his liberality towards this institution, which will not soon be forgotten.

He was no politician, at least, not in the common acceptation of the term. It may well be presumed, that had he attempted the career of a party politician, he would have failed, so far as his own aggrandizement is concerned. His taste turned him against the bartering, bargaining politicians of his day.

On the accession of President Johnson to the chief magistracy, he was offered the position of attorney-general in the president's cabinet; he was urged by many of his friends to accept it, but he peremptorily declined, remarking that if there was anything for which he entertained a holy-horror, it was compulsory association with Washington politicians.

He was frequently urged to become a candidate for Congress, but he invariably declined, with that courtesy which governed him in every sphere of action. He was never voted for by the people, but twice—once in 1850, when he was the candidate of the Hardshell Democracy for attorney-general, against Judge Grover, Softshell, or the Freesoil section of that party. Mr. Brady's vote in the State was exceedingly flattering, but Ogden Hoffman, the nominee of the Whig party, was elected. The second time Mr. Brady was voted for, was in 1860, when he became the candidate of the Breckinridge and Lane portion of the Democracy, for the office of governor of the State of New York.

"He was always identified with the Democratic party, and in his youth, during the times of Jackson and Van Buren, he was an active partisan. Although a conscientious adherent to the principles of the Democracy, and a staunch opponent of the Republican party, when the late war broke out, he snapped asunder all political ties that bound him to party policy, and came out boldly against the southern leaders. Few persons did more than he to arouse the patriotism of the people in urging on a complete crushing out of the spirit that animated the insurrection against the federal government. During the terrible riots of 1863, he also took advanced ground in favor of supporting the draft law, and denounced with all the energy of his nature, the attempts that were made to prevent its execution. The only occasion on which he ever acted officially for the federal government was in 1867, when he was sent to New Orleans, as joint commissioner with General 'Baldy' Smith, to investigate the irregularities that were alleged to have been committed in the Department of the Gulf. He drew up a report of the investigations of the commission, which is now in the archives of the war department. It is said to reflect very severely against many officers who were stationed in New Orleans and at other posts in the De-

partment of the Gulf; but for some reason it never was made public. He was, many years ago, after yielding to the extreme solicitation of the authorities, appointed to fill a vacancy occurring in the office of district-attorney of the city and county of New York, but held the position only a few months." Though in his maturer years, as we have seen, he was not an active politician, yet in the days of his allegiance to the Democratic party, he often addressed political gatherings, and often wielded his pen in defense of his political principles. But neither his speeches nor his writings were confined to the narrow and transitory politics of the day; he delighted to turn the mind from temporary and personal views, to the great principles upon which every decision of reason must ultimately rest; and without the frequent contemplation of which, as Bishop Berkley says, "A man may, indeed, be a thriving earth worm, but he will prove a sorry patriot." Mistakes as to facts—the illusions of political prejudice, or the operation of those passions inseparable from human frailty, may sometimes have led him to erroneous conclusions. In his speeches and in his writings, he was always acute in the perception of principles, and in grasping the question under consideration—luminous in their exposition, and ingenious in their defense.

His faults as a speaker or writer were a tendency to verbosity, and the too frequent use of expletives. On popular themes, he sometimes sought too many decorations of fancy, which led to redundancy; but these faults were not of frequent occurrence; usually, there was that *naivete* and simplicity in his style and manner, which never failed to interest the reader or hearer.

He never arose to address the court, the jury, or the general assemblage, without at once commanding the respect and attention of all in his presence. His manner was animated and pleasing; the interest which he excited soon obscured all his errors. He had a happy talent of adjusting his manner as well as his

discourse to the capacity of his hearers, and the object regarding which he spoke. In the language of an eminent legal writer, "He was always fit for the occasion sudden." This is illustrated by the following incident, related by Luther R. Marsh, Esq.

"I had a case some years ago of such importance to property and character, that I deemed it advisable to call in Mr. Brady to share the responsibility. But so crowded and imperative were his engagements, that I found it impracticable to meet him in consultation—all our appointments fell through. Nevertheless, I sent him notice of the time the court had assigned for the argument, and he was promptly there; though wholly uninformed of the facts or position of the case, I was glad for the magnetism of his presence, though anticipating but little actual support from his reply. Purposely opening very fully—more for him than the court—I observed him rapidly taking notes; and when I had concluded, he attached and folded his sheets and handed them to me. I found on perusing them, that he had grasped the whole case—comprehending every question involved in it, adding additional points of great weight and importance, which he had prepared on the occasion. Then, after the opposing argument, followed his reply—so complete, so well arranged, so powerful, that it would have been remarkable under any state of preparation, but most extraordinary as a spontaneous production."

One of the great characteristics of Mr. Brady, was his independence of character, professional as well as private. Professionally, he cared nothing for weighty influence or powerful names. He believed the intellect was too mighty to be subservient to money, or influenced by popular tumult. Hence, as we have seen, when the incidents which led to the late war were occurring, he did not hesitate to unite himself, heart and hand, with those who were engaged in suppressing the rebellion. And yet, to use the language of Mr. O'Conor, "Perhaps, the two most remarkable

circumstances connected with his professional career, were such as to excite among superficial observers, a doubt of his earnestness. When the crew of the Confederate privateer *Savannah* were placed upon trial in the city of New York, for piracy, James T. Brady, unrewarded, so far as I know, appeared as the leading champion of the defense—demanding an acquittal. When the struggle had passed—when the mighty conflict was over, a somewhat similar drama was announced. The chief of that great Confederacy was summoned to a similar ordeal; and at once, under the influence of similar sentiments, Mr. Brady appeared as his defender. For this unpopular and arduous office, he also declined remuneration, though ample compensation was tendered. In these acts, you see evinced the self-relying determination and independence of the man's character—his firm and discriminating judgment. His feelings, his prepossessions, his interests, all that could engage the heart of man, placed him upon the side of the North. Could he have so directed the enginery of the war, its stroke would have been fatal to every armed foe throughout the South. But he had a cool, dispassionate judgment, knowledge of the law, and a sense of decorum; and these led him to certain definite conclusions. He thought that courts, juries, and the gallows, were unfit weapons of war; he deemed them most unfitting accompaniments of the peace which arms had won."

Mr. Brady's situation in defending the Savannah privateers and Mr. Davis, was similar to that of the elder Adams in defending the British officers and soldiers, engaged in the Boston massacre, in 1770. At that time Mr. Adams was one of the leading patriots, greatly beloved and esteemed for his patriotic exertions and his intrepidity in opposing British aggression, and yet, "at the risk of losing the favor and esteem of the people, he appeared as the advocate of the accused, having for his colleague Josiah Quincy, an-

other leading patriot, whose eloquence had often been heard at the assemblies of the Sons of Liberty."

Few men had a more extensive circle of cherished friends than Mr. Brady. His manners were courteous and kindness was innate in his nature. "With the younger members of the bar he was an especial favorite, always ready to aid them by his counsel and advice. In the social circle he was a genial companion; he had an abundance of anecdote, and was prompt at wit and repartee. For the land of his ancestry, he entertained a love hardly less than that which he invariably avowed for his native soil, and some of his finest touches of eloquence are known in connection with his address on Irish national subjects."

The disease which has been spoken of in connection with the Cole-Hiscock trial, continued to prey upon him, though its symptoms were not sufficiently dangerous to admonish him of his approaching dissolution. His last public speech was delivered on the 14th day of January, 1869, at the banquet given to that distinguished lawyer, James W. Gerard, on his retiring from the bar. In that assemblage of great and gifted lawyers, Mr. Brady appeared, meeting there, for the last time, those professional brethren, endeared to him by long association.

The scene was unrivaled for luminous eloquence, bright thoughts, original imagery and for a flow of high toned and generous sentiment. There the intellect, imagination, and thought of Brady shone out with peculiar brilliancy—in a sort of unconscious power—in a kind of intuitive perception of the analogy of things. His theme was "Our Fraternal Union" —a subject peculiarly adapted to his talents and to the occasion; some portions of it breathed a pathos which touched all hearts, and aroused emotions which cannot be forgotten by those who listened to him.

After this banquet, Mr. Brady continued his professional duties, nearly to the day of his death. He died on Tuesday, the 9th day of February, 1869.

On the Friday previous, he was engaged in the Supreme Court during the forenoon; at one o'clock he argued a motion in the Superior Court, and during the remainder of the day, he was engaged in the trial of a cause before a referee. On the Sunday following he was stricken down, and rendered speechless by paralysis; he lingered until Tuesday following, when he expired.

His death created a profound sensation throughout the country. The bench and the bar attested their respect for his memory, by proceedings characterized by the deepest solemnity and sorrow. Nearly all the eminent members of the New York city bar assembled on a call, to attest their grief at the sudden death of their distinguished professional brother. Every degree of talent, of eloquence, and imagination, laid upon his tomb bright and fragrant garlands. "Youth, middle age,—his equals and his peers—the ablest and most respected of his contemporaries, descanted in decent, modest, and becoming language upon his merits."

The popular favor which he enjoyed in such unmeasured profusion, was indicated by a little circumstance which occurred after his decease. A poor Irish woman, to whom he was known, when she learned of his death, out of her scanty earnings purchased a camellia, brought it to the door of his residence, and with tears in her eyes, requested that it might be laid upon his coffin.

The wealthy in their pride and strength, the gifted —the eloquent—the renowned, and the poor in their poverty, offered incense to his memory.

The personal appearance of Mr. Brady was attractive and pleasing. He was slightly above the middle size, erect and well proportioned. His face was one which left a permanent impression upon the mind of the beholder; it had all the distinguishing expressions of intellect and the sovereignty of mind. His brow was superb; his forehead broad and high; his hair

dark, thick, and curling, revealed his expansive forehead, except where a single lock fell over it. His eye and mouth indicated benevolence, refinement, and reflection; finally, the classic contour of his features would attract the admiration of the gifted artist, who, while he admired, could not imitate.

Mr. Brady never married. His home was with sisters, to whom he was deeply and tenderly attached; such were his domestic enjoyments with them, that "he seemed unwilling, by forming a matrimonial alliance, to loosen the tie which bound him to his fraternal relations."

SAMUEL G. HATHAWAY.

His Love of the Legal Profession and Literature.—A Patron of Indigent Literary Men.—Incident Connected with an Eminent Poet.—The Loan.—The Singular but Generous Payment.—His Birth.—A Son of General S. G. Hathaway.—Character of his Father.—The Pioneers.—Their Memory.—Political Incidents in the Life of General Hathaway.—Is Present at the Attempted Assassination of General Jackson.—Scene.—Young Hathaway Enters Union College.—During Vacation, Visits a Friend Engaged in Teaching.—Dullness of the School Room to the Visitor.—Effort of the Teacher to Amuse his Friend.—Laughable Scene in the School Room.—A Whipping in Advance.—Hathaway Graduates and Commences the Study of Law at Cortland, New York.—Completes his Studies with Judge Gray, at Elmira.—Admitted to the Bar, and Commences Practice with his Preceptor.—Election of Judge Gray to the Bench of the Supreme Court.—Hathaway forms new Professional Relations.—His Politics.—Is Elected to the Legislature of 1842-43.—His Legislative Career.—Azariah C. Flagg.—George P. Barker.—Horatio Seymour.—Michael Hoffman.—Edwin Croswell.—Samuel Beardsley.—Speeches of Mr. Hathaway.—His Reply to Colonel Young.—Stop Policy.—Governor Bouck.—Hathaway Retires from the Legislature.—Refuses a Renomination, but Afterwards Active in Politics.—The Democratic War Horse of the Southern Tier.—Engages Actively in his Profession.—Character as a Lawyer.—Amusing Scene with a Judge.—Hathaway and the Doctor.—Personal Appearance.—Enters the Army as Colonel of the One Hundred and Forty-first Regiment.—Attachment of his Officers to Him.—Ill Health.—Compelled to Resign.—Continued Sickness.—Scene of his Death.—General Characteristics.

No man was ever more ardently attached to his profession than Samuel G. Hathaway; he regarded it as "the great avenue to political influence and reputation, whose honors are among the most splendid that can be attained in a free State, and whose emoluments and privileges are exhibited as a prize to be contested freely by all its members." He believed the science of law to be "the perfection of all human reason." As a student, he reduced the study of it to those methodical rules which are adopted in the acquisition of any science; still he did not sacrifice to his profession

the general improvement of his intellect and heart. Never was there a more unconfined mind than his, and it may be cited as a practical example of the benefits of that general culture of the intellect which forms one distinction of our times; but which some dread as unfriendly to original thought; but as has been well said, the mind is diffusive, and accordingly, its natural progess is from one to another field of thought; and that wherever original power, or creative genius exists, far from being distracted or oppressed by the variety of its acquisitions, it will see more and more common bearings—more hidden and beautiful analogies in all the objects of knowledge—will see mutual light shed from truth to truth, in whatever topic it would unfold. This was well understood by Mr. Hathaway, and this rendered his mind singularly harmonious—a well adjusted whole.

He was accustomed from his youth to drink from the fountains of classical literature, but he possessed no pedantry or undue fastidiousness. In the midst of his most trying professional labors, he often surrendered himself to the enchantment of literary reading —of Oriental fiction—of the strange and beautiful cretions of "Araby the blest."

An ample fortune gave him every opportunity for the cultivation and enjoyment of his taste.

To indigent literary men, his hand was ever open. The following circumstance is only one of the many that characterized his intercourse with them. Several years before his death, a distinguished poet of our own State, who still lives and is known to fame, but who, like many that court the Muses and linger around Parnassus, was then poor; happened to be in the city of New York, much in need of means to extricate himself from embarrassment. While deeply studying how and in what manner to obtain pecuniary relief, he happened to meet Mr. Hathaway, with whom he was acquainted, coming out of the Supreme Court room in the City Hall.

"Ah, Colonel, how do you do? I am very glad to see you," said the poet, shaking hands with the former.

"I am very happy to meet you, and how is it with you and the republic of letters?" said the colonel.

"You know, Colonel Hathaway, that all republics are ungrateful, but the republic of letters is especially so, and I am just now a victim of the latter," said he of the Muses.

"I am sorry to hear this; it cannot be that the *vox populi* demand your oppression," replied Mr. H.

"Oh, no," said our friend, "it is only this, I am sorely oppressed for the want of a sum of money, and as I always give my particular friends the preference on such occasions, I desire that you will loan me the amount I need."

Mr. Hathaway learned that the sum he desired was one hundred and fifty dollars. As soon as it could be counted, the poet was rejoicing in the possession of the money. With many thanks, and promises of an early payment, he hastened from his benefactor to his importunate creditors.

Time passed on, a year rolled away, and in the multiplicity of business, the event had nearly passed from the memory of Mr. Hathaway, when one day he received by express, a box of considerable size, quite heavy, and apparently well filled. Upon removing the cover, he saw that it contained a large number of neatly bound books, which, upon examination, proved to be the recently published works of the poet to whom he had loaned the money in New York. Taking the books from the box, he discovered, neatly written on the inside of it, the following couplet:

> "Bards are birds of various prey,
> Ye gods, why pounce on Hathaway?"

It was enough; the lender was generously paid, and, as he afterwards said, the books more than paid

the principal, and the poetry paid the interest compounded.

Colonel Samuel G. Hathaway was born at Freetown, in the county of Cortland, on the 18th day of January, 1810. His parents were the late Major-General Samuel G. Hathaway, and Sally Emerson, of Solon, Cortland county. The families of Hathaway and Emerson, are both of English descent; that of the former has a known genealogy, which extends far back into English history. In the long and eventful life of General Hathaway—in the various positions which he occupied—in the many posts of public duty which he filled—in the many instances which his life affords of untiring energy, and devoted patriotism, a true representative character of our Republic is developed, which impresses its own appropriate teaching on posterity; for, in the language of inspiration, "No man liveth, and no man dieth unto himself." It was quaintly said by one of the kings of Arragon, "Dead men are our best instructors." General Hathaway was one of those who aided in making the desert bloom. He was a pioneer of central New York.

Alas! how fast they are passing away from earth, these sons and daughters of a day of peril, toil, and hardships. Their stern virtue, their unbending integrity, their enterprise and industry, laid the foundation for the wealth, the culture, the refinement of our day. Most of them sleep beneath the soil they loved so well, and which they made almost as rich as the vale of Cashmere. Wealth and fashion have changed their good old customs, their homely, but time-honored institutions; yet on the hillside, and in the valley, their green graves are venerated spots, and their spirits seem to linger by the forest and the stream, while the murmuring breeze breathes a gentle, but not unwelcome, requiem for them. Let us fondly cherish the memory of the pioneer. "Let not ambition mock their useful toil." Amid the events of our day their memory will come to us, like a voice

from the past, with many hallowed associations, which bind their names to every spot where they fought so well the battle of life.

> "And these—of whose abode,
> Midst her green vallies earth retains no trace,
> Save a flower springing from their burial sod,
> A shade of sadness on some kindred face
> A dim and vacant place
> In some sweet home."

Among such men Mr. Hathaway was a leader whom they delighted to honor; and whose interest he ever labored to advance and promote. At the organization of Cortland county, which took place in 1808, he settled at Solon, where he continued to reside until his death. In the spring of 1814, he was elected member of Assembly from Cortland county. In the spring of 1813, Daniel D. Tompkins was triumphantly re-elected governor, over Stephen Van Rensselaer, his opponent. The war with England was then raging, and such was the ardent, energetic and patriotic support which Mr. Tompkins, in his previous administration, had given President Madison in the prosecution of the war, that he became the darling of the then victorious Republicans, and "The Farmer Boy of Westchester," as Mr. T. was then called, "was toasted at every gathering of that party."

General Hathaway entered the Legislature the firm and unswerving friend of the president, the close, intimate and influential supporter of Governor Tompkins; and their friendly relations continued through life. In the year 1816, the General acted with Enos T. Throop, Martin Van Buren, Peter B. Porter and others, in securing the nomination and election of Mr. Tompkins to the vice-presidency of the United States. Mr. Monroe received the electoral vote for president. Mr. Hathaway was again elected to the Legislature in the year 1818. Cadwadader D.

Calden, and Ogden Edwards, of New York city; Stephen Van Rensselaer and William A. Duer, of Albany; William B. Rochester, of Steuben; Erastus Root, of Delaware, and William C. Bouck, of Scoharie, were then members of Assembly — while the Senate was composed of such names as Martin Van Buren, Abraham Van Vechten, Samuel Young, Peter R. Livingston, Moses J. Cantine, Jabez D. Hammond.

Those were days when talent, ability, probity and honor were sternly demanded of those who sought legislative and other official honors. In those days cupidity, speculation, and infamous panderings to sources of wealth, were not known by law-makers. In those days ambitious, inefficient, ignorant, bad men did not push themselves into high places. In those days men did not prate, in halls of legislation, of morality, patriotism, and even religion, in accompaniment to the ring of the dollars which had just bought their souls. Politics was not then the reeking cesspool where men fatten and grow rich on corruption—men, who yesterday were the Lazaruses whose sores were not even licked, and who to-day revel in putrid magnificence.

General Hathaway was elected a State senator from the old sixth Senatorial district in 1823, during the administration of Governor Yates. He was elected a representative in Congress from the then seventh Congressional district in the year 1832, and took his seat in 1833.

It was during the second session of this Congress that Richard Lawrence made a bold and intrepid attempt to assassinate President Jackson, "which produced great sensation at the time, and which, if the consequences had been equal to the apparent purpose, would have signalized the day by a horrible catastrophe." The attempt was made in the portico of the capitol, at the funeral of the Honorable Warren R.

Davis, member of Congress from South Carolina, just as the president, with the secretary of the treasury, Hon. Levi Woodbury, on his left arm, was leaving the rotunda. Mr. Hathaway and General Root were a few paces in their rear, when a person stepping forward from the crowd in front of the president, within two yards and a half of him, leveled a pistol at his breast.

A loud and sharp report instantly followed, which was supposed to be the report of the pistol, but which was only the explosion of the percussion cap. The man instantly threw the weapon upon the ground, and drew another, ready cocked, from his pocket, which he presented at the heart of the president, and another loud report reverberated through the portico; this, too, proved to be merely the explosion of the cap; the pistol did not discharge.

All this was done so rapidly and adroitly that no one had time to interfere with the attack until all was over. In a moment a scene of indescribable terror and confusion ensued; many believed that the president had been assassinated. The old hero himself exhibited that dauntless courage which ever characterized him in times of peril. He did not observe the assailant until after the discharge of the first cap, when his attention was directed to him by the report. The man was then in the act of presenting the second pistol. Lifting his cane, the general sprang like a lion upon his antagonist, but, before reaching him, the explosion of the cap took place. The next instant the President was near enough to strike him with his cane, exclaiming, "Leave him to me, and, by the Eternal, he will never do that thing again"; but by this time Mr. Woodbury, Generals Root and Hathaway, had reached the assassin, and he was at once prostrated upon the floor. Upon examination, the weapons proved to be a pair of elaborately finished pistols, of the Derringer order. They

were perfect in all their parts, and carefully charged with powder and ball.

There was nothing discovered which could prevent their discharge. The next day, in presence of the secretary of the navy, and other distinguished gentlemen, they were re-capped, the charge which had been inserted by Lawrence still remaining, and, at the first attempt, they were both discharged; the balls which they contained penetrated several inches into a stick of hard timber, exhibiting at once the deadly nature of the weapons which had so mysteriously failed when presented at the heart of the president. His escape was, indeed, most wonderful, and a grateful nation saw in it the hand of Omnipotence—the shield of Him who controls the destinies of nations.

President Jackson laid his hand upon the Bank of the United States with the energy of a giant, and that powerful institution which controlled the money marts of the nation, I had almost said of the world, writhed in his grasp like the fabled Laocoon, Neptune's priest, in the folds of Minerva's monsters. Rage and bitter defiance followed the fearful contact. The nation was convulsed from center to circumference; but the genius, the power, and the irresistible determination of Jackson prevailed, and the Bank, with all its power and influence, fell conquered and helpless at his feet.

The attempt at his assassination was believed by his friends to have been planned by the friends of the Bank, and for a short time it was openly charged upon them. But, upon due examination, it was ascertained that Lawrence was hopelessly insane; having no motive whatever in his attempt upon the life of the president, except the vagaries of a mind in ruins.

After retiring from Congress, General Hathaway returned to Cortland county, and ever after declined all civil office. He was, however, until a period near his death, an acting major-general of militia in this State, having held that office for many years. He

died at Solon on the 2nd day of May, in the year 1867, in the eighty-seventh year of his age.

Colonel S. G. Hathaway prepared for college principally at the Cortland Academy. He graduated at Union College when he was twenty-one years of age. While at college, he had a much esteemed friend, who was a student at law, and who, during the winter, taught a district school to aid him in procuring means for the prosecution of his studies. During one of his college vacations, young Hathaway visited his friend, spending the afternoon in the school room. It was a dull place for the gay and active young collegian. This soon became apparent to the teacher, who exerted himself to create some interest for his friend. Classes were called for Hathaway to inspect. Lessons were rehearsed, hard words were spelled, and hard problems in arithmetic solved, but all to no purpose, the school room was the empire of dullness to the visitor. The schoolmaster found himself pushed to extremities for something to interest his friend. In this manner some time passed away, when suddenly the man of the rod called out—

"James Buck, come here!"

This command was addressed to a dirty, squint-eyed, mischievous looking boy, apparently twelve or fourteen years of age, who happened just then to be demeaning himself quite reputably. The boy obeyed, looking the very picture of injured innocence.

"Take off your coat, sir," said the teacher, seizing a formidable looking rod which lay upon a table near by.

"O, dear, I hain't been doing nothing, no how. Bill Jones wanted to give me a great launking doughnut just now, but I wouldn't take it, 'cause I wanted to be good," blubbered the urchin.

"Take off your coat, I say!" said the teacher, flourishing the whip.

"You ain't going to lick a feller for being good, are you?" roared the boy.

"Take off your coat!" thundered the teacher.

Seeing no other alternative, he obeyed, and the master gave him a good, thorough, old-fashioned whipping, during which the boy continued to scream, "Oh, hold up, hold up! I didn't take Bill Jones' big dough-nut; I didn't do nothing, no how. Oh, hold up! hold up!"

The whipping over, the boy put on his coat and resumed his seat. Hathaway, during this scene, was obliged to cram a handkerchief into his mouth, to prevent his roaring with laughter at the queer ejaculations and gyrations of the boy.

"What on earth did you whip the boy for? I didn't see as he had done anything to deserve it," said Hathaway to the teacher, as they were walking home after school.

"Hath," replied the schoolmaster, "I saw that it was getting confounded dull, and I felt so sorry for you, that I didn't know what to do. So I called up that boy and thrashed him for your especial benefit."

"But the boy had done nothing to deserve it," replied Hathaway.

"Never mind that; he seldom goes a half day without deserving a thrashing, and I'll give him credit for this one the next time he deserves the gad. So he has lost nothing, and I made it interesting for you, Sam," replied the teacher.

Subsequently, the schoolmaster became a distinguished and successful lawyer, continuing his friendly relations with Mr. Hathaway through life. It was the delight of the latter to relate this story before his friends on festive occasions, always ending by saying, "It is true, you know;" to which the latter would reply, "Yes, it is as true now as it ever was."

Immediately after graduating, Colonel Hathaway entered the office of Hon. Jonathan L. Woods, a lawyer of high standing, residing at Cortland village. Mr. Woods represented Cortland county in the Leg-

islature of this State with much ability, in the year 1832, and during his life he retained the confidence and respect of the bar and of the people generally.

After continuing one year with Mr. Woods, Hathaway was invited by Hon. Hiram Gray, of Elmira, to enter his office as a student. The offer was accepted, and he removed from Cortland to Elmira, in August, 1833. At this period, Judge Gray had fully entered upon that field of successful and extensive professional practice that led to the high position which he has attained as a lawyer and a judge. He had once been a resident of Cortland, having for some time pursued his legal studies there. Here he first became acquainted with Mr. Hathaway, whom he regarded as a young man of uncommonly ripe understanding, and possessing many rare and engaging qualities.

Under the care and superintendence of Judge Gray, Mr. Hathaway progressed rapidly in his studies; he was a close and methodical student. The science of law opened to him a vast field of intellectual research; and he regarded it not only as a rule of action, but as a system of ethical and inductive philosophy, through which the intellect and heart are alike invigorated and enlarged; a science which is intimately connected with the great objects of thought, and the great interests of life—a theme which has summoned as its follower, all orders of mind, the scholar, the statesman, the student of nature, and the observer of life's great drama. To the casual observer, it is sometimes regarded as a system of technicalities disjointed from philosophy, from literature, and from liberal research—a system through which justice and equity is often too finely filtered to answer the great ends for which it was designed. But this is a Utopian view, founded, perhaps, on observing the career of legal martinets, instead of liberal and high-minded lawyers. In studying law, Mr. Hathaway was not satisfied with simply ac-

quiring the "familiar weapons with which lawyers war with one another." It was not his object to become expert, but profound.

He completed his legal studies with Judge Gray, and was admitted to the bar at the October term of the Supreme Court, held at Albany, in 1836. John Savage was then chief justice, and this was the last term at which that eminent and learned jurist presided. He retired from the bench in January following, spending the remainder of his days in dignified retirement, upon his estate at Salem, in the county of Washington. Mr. Hathaway, immediately after being called to the bar, formed a copartnership with Hon. James Dunn, of Elmira, who was subsequently appointed first judge of Chemung county, by Governor Wright. This relation continued but one year. After its termination, Mr. Hathaway entered into partnership with his preceptor, Judge Gray.

This firm existed until the year 1846, when the senior member was appointed one of the circuit judges of the State. Judge Gray had previously been elected to represent the then twenty-second Congressional district in Congress.

The Constitution of 1846 provided that the judges of the Supreme Court should be elected by the people. In the convention which formed this Constitution, the question of an elective judiciary was one of the great subjects for discussion. The propriety of submitting so important an office to the vicissitudes of political parties, and political interests—to the corrupting influence of partizan strife—of rendering its high and dignified functions a prize for scrambling party politicians and petty demagogues—was doubted by many liberal and reflective minds. But happily, with some exceptions, the doubts and fears which existed against an elective judiciary have proved groundless, and to-day the Empire State has a bench which loses nothing when compared with the learned and illustrious judges of the past.

Judge Gray was elected a justice of the Supreme Court at the judicial election, which took place soon after the new Constitution went into operation. His official term continued four years, at the expiration of which time he returned again to the practice of his profession, simply because he was ardently attached to it, and because he could not endure to be an idle spectator of an arena, wherein he had been so long and so successfully a contestant.

After the appointment of Judge Gray, Colonel Hathaway formed a copartnership with Hon. A. S. Diven and James L. Woods. The former had been a distinguished and successful member of the Allegany bar, which was composed of men of much more than ordinary ability and learning—of such men as William G. Angel, Martin Grover, Luther C. Peck, George Miles, Samuel S. Haight, and others. A bar within whose pale John Young, of Livingston, John B. Skinner, of Wyoming, Selden, of Rochester, Howell, Cruger, and Hawley, of Steuben, often appeared. The firm of Diven, Hathaway & Woods soon became one of the most prominent and successful legal firms in the State. It continued in successful operation fifteen years, and was dissolved by the death of Colonel Hathaway.

Colonel Hathaway represented Chemung county in the Legislature of 1842–43. In the session of 1842, the subject of State finances engrossed the attention of both branches of the Legislature to a large extent. On the part of many there was a bitter and determined hostility to the prosecution of the public works: and this winter a law was passed which suspended the public works, and imposed a direct tax, pledging a portion of the canal revenues as a sinking fund for the extinguishment of the public debt. Azariah C. Flagg was then comptroller. He was an able, methodical, keen, and sagacious financier, a warm personal and political friend of Colonel Young, who was distinguished for his antagonism to internal improve-

ments. It has been said that the State was indebted to Mr. Flagg for whatever evil flowed from the famous measure known as the stop and tax policy. But Colonel Young was really the originator of that policy. On the 25th of April, 1839, as chairman of the Senate Committee on Finance, he presented to that body his celebrated report. It was able, logical, scholastic. It denounced, in the most bitter and sarcastic manner, the existing system of internal improvement. As it was generally read by all parties, it accelerated the growing hostility to the prosecution of public works, and led to the enactment of the great stop law.

"Should a quack doctor," said Mr. Young, in his remarkable report, "propose to his patients that he would duly open their veins and feed and nourish them with their own vital fluid, they would probably ask him whether it would be more nutritious after having passed through his hands than it was at present; and whether it would be an 'internal improvement' to suffer the pain of reiterated venesection and pay his fees besides? But if the quack should go a step farther, and propose to apply their blood to the use of others, or to the benefit of the favored few, then the cheat would be obvious. When a State empiric, however, urges the same process upon this great community; when he proposes to fix the tourniquet of law upon the body politic, and make a deep incision into the jugular vein, causing a depletion of forty millions of its wealth, thousands of robbers known as corporators, are prompt to applaud the experiment, to hold the bowl and to adjust the bandage."

On this financial and internal improvement question the Democratic party were divided. Colonel Young, Mr. Flagg, Mr. Barker, Michael Hoffman and others favored the stop and tax policy, while Mr. Seymour, Mr. Bouck, Mr. Croswell, Mr. Beardsley, and many other distinguished Democrats, opposed it. Of course the Whigs threw their strength where it would most distract and divide the Democratic party.

In politics, Colonel Hathaway was a Democrat. He inherited his political faith from his father. His attachment to the Democratic party might have been expressed in the strong and beautiful language of the daughter of Moab, "Thy people shall be my people, where thou diest will I die, and there will I be buried."

He possessed thought, vehemence, fire, mirth, and wit. Though the ground on which he trod was that of legislator, lawyer, and logician, "he delighted to pluck the flowers that sprang spontaneously in his path, while he trampled in disdain the far-fetched and tawdry exotic." A sharp and polished sarcasm was at his command, which, like the spear of Ithuriel, often exhausted the force of an opponent's argument, with singular facility. Yet he was dignified, gentle, conciliating, often commanding and imposing. He entered ardently, but consistently, into the consideration of the great questions before the Legislature. He took a statesmanlike and liberal view of the internal improvement and finance question, and coincided with Dickinson, Seymour, Beardsley, and Croswell.

On the 5th of February, 1842, Colonel Hathaway delivered a speech in the Assembly on the internal improvement and stop law, then pending before the Legislature, which won the highest commendation and applause from all parties. In portions of it he went far above politics and parties. He spoke of the sacred duties, and the awful responsibilities of the Legislature. He boldly rebuked legislative abuses and errors which had passed current for years. This speech was delivered with a clearness of reason, a variety of illustration, a felicity of diction, and a glowing imagery which at once stamped him a successful orator, who was master of his subject and himself; finally, it "blended instruction with delight."

"There should," said Mr. Hathaway, "be an honesty of purpose in this matter. All questions here should be absorbed in that of the general wel-

fare, and the advancement of the interest of our great State. What are politics or party compared to this great question? When, sir, it comes to be understood that politics is a game, and that those who engage in it but act a part subservient to their own aggrandisement, that they make this or that profession, not from an honest conviction, or from any intent to fullfil them, but as a means of deluding the people, and through that delusion to acquire power or wealth; when such professions are made only to be entirely forgotten, the people will lose confidence in public men; the politician, aye, sir, and the legislator, will be regarded as a mere juggler—the honest and the patriotic, as well as the cunning and the profligate—and the people will become indifferent and passive to the grossest abuse of power, on the ground that those whom they elevate, under whatever pledges, instead of reforming, will but imitate the example of those whom they have expelled."

Such was the language and such the sentiments of Mr. Hathaway in 1842. Did not his words have a prophetic meaning? Have not the people become indifferent and passive to the grossest abuses of power? Who can deny that the symptoms of the present day indicate a deep and growing propensity to regard all matters of legislation as measures of private speculation and advancement? Rich and powerful corporations are constantly petitioning the Legislature, both State and national, for franchises, privileges and immunities, which enable them to disregard all individual rights, and at length to defy the Legislature itself.

This indifference to the great evils of which Mr. Hathaway spoke twenty-eight years ago, has been increasing down to the present time; but, however dormant and stupid the people now are, the time will come when they will awaken with terrible earnestness to the dangers that surround them.

In the fall of 1842, Colonel Hathaway again con-

sented to accept the nomination for member of Assembly; he was triumphantly elected, and took his seat in that body in January, 1843. Mr. Bouck had been elected governor, and was inaugurated on the first day of January, 1843.

Notwithstanding the great victory of the Democratic party in the election of 1842, it was evident that a collision between the two factions of that party was inevitable. It was soon ascertained that Colonel Young, Mr. Flagg and others, of the Radical side of the party, would submit to no compromise which did not recognize their right to control all party machinery — while, on the other hand, Mr. Dickinson, Seymour, Beardsley, Croswell, and others, held a position equally uncompromising. Of course, this rendered the position of Mr. Bouck one of great difficulty and embarrassment. The governor was not a great man; his chief distinction was not talent, although he had fine powers of intellect, a capacity of attention, a thorough knowledge of men and their relations. He could easily understand their preferences and prejudices, a faculty which, in usefulness if not in splendor, often surpasses genius. His primary characteristic, however, and that which gave him peculiar weight and influence, was the force of moral principle —a force which, with him, operated with the steadiness of a law of nature, and which suffered no portion of his life to be wasted. He was a self-made man, a true representative of American institutions and privileges. He early learned to appreciate and value the talents and ability of Mr. Hathaway. Upon national politics, and upon some questions of State policy, the Democrats were united. Mr. Davis, of Troy, was elected Speaker. His election was, in some sense, the result of a compromise between the factions. As a tribute of respect to Mr. Hathaway, he was made chairman of the Judiciary Committee, a position which his talents eminently qualified him to occupy.

During the winter of 1843, Colonel Hathaway in-

troduced a bill into the Legislature modifying the stop law of 1842. This bill provided for the completion of the unfinished public works in the State. An immense sum of money had already been expended upon these works, and at this time they were in various degrees of progress; some of them were nearly completed. The bill was drawn with great care and prudence, and united every element of conciliation. It was strongly supported by many of the ablest Democrats in the House. Mr. Hathaway, in a speech delivered in favor of it, clearly, ably and liberally reviewed the whole question of the stop policy, and internal improvements. His allusion to the report of Colonel Young on this subject, was exceedingly happy.

"The author of that report," said Mr. Hathaway, "is a fierce dogmatist, armed with a splendid intellect, a bold, gigantic pen, a beautiful sophistry, over which the pinching and narrow policy of the miser presides. He is the Saul of Tarsus of the times, exceedingly mad at the great improvements of the day, and breathing out vengeance against them. He should, however, study the signs of the times, and wait the descending inspiration of coming events. It is unfortunate for the country that he has so many adherents in this House, who are wasting their voices like Baal's prophets, in crying to dumb elements, or sleeping Pantheistic gods, while others are going about like well-meaning but over-slept watchmen calling the hours of midnight, while the morning is paling their lanterns."

He successfully demonstrated that the damages resulting from this suspension would equal, if it did not exceed, the cost of completing the public works. But such was the prejudice of the majority against their prosecution or completion, that Mr. Hathaway's bill was defeated. The position taken by him and his friends on this question, however, has been fully sustained by subsequent events.

The legislation of that day, on the subject of internal improvements, was governed by the same narrow policy which always springs into existence in the light of improvement and advancement. It was like the ceremony of Galileo's abjuration of his "system of the world;" "when that master spirit of his age—that high priest of the stars—that representative of science—that hoary sage, whose career of glory was near its consummation—was compelled to bow before ignorance and prejudice—before a mistaken respect for errors which had become venerable from their antiquity—before the assembled cardinals of Rome—pledging himself that he would never again teach the doctrine of the world's motion and the sun's stability." But although he was driven back from his splendid theory, in shuddering admiration, yet its truths have become immortal.

Thus, the question of internal improvement has passed into manifestations of success, from progress to progress, until distance between the Atlantic and Pacific is annihilated, and through a continent the two oceans hear each other's voices. But all improvement is a victory won by struggle. It is especially true that those great periods from which we date the most rapid movements of the human mind have been signalized by conflict. Men of natural softness and timidity of character stand appalled before the energies of great and progressive minds.

Mr. Hathaway was no exaggerator, no enthusiast; he had the capacity of distinguishing what tended to the public good, and he possessed the courage to sustain his conviction of the right, even at the expense of an ephemeral popularity. Hence, as a legislator he considered himself as the servant of his constituents, whose duty it was to advance and promote their interest. After retiring from the Legislature in 1843, Colonel Hathaway declined another nomination, and applied himself to the practice of his profession. While discharging his legislative duties he became connected

with certain speculations, which subsequently resulted very favorably for him, and which, with the large income he derived from his profession, soon placed him in affluent circumstances.

After leaving the Assembly Mr. Hathaway never held any political office, except that of supervisor in the city of Elmira; yet he was regarded as a prominent leader of the Democratic party in the State, and he was often termed "the Democratic War-horse of the Southern Tier." In the fall of 1856 he received the nomination for Congress in his district. Honorable J. M. Parker, of Oswego, was the opposing candidate. But as the Democracy in the district was hopelessly in the minority, he was of course defeated. He was again nominated in 1862, while in command of his regiment in Virginia. This nomination was made without his knowledge or consent. He was opposed by Colonel R. B. Van Valkenburg, the Republican candidate, who was elected. Absent as he was, and unable to give the canvass the least attention, still he was strongly supported, receiving a vote which was highly complimentary and flattering to him. The love and devotion of his political friends were cheering and grateful to his heart, were acknowledged all his life, and were recognized even to the day of his death.

For many years Colonel Hathaway was principally engaged in the various courts in which he practiced. He was a powerful and successful advocate, and possessed the real powers of a legal orator. He was often irresistible before a jury. Frequently, when a cause seemed hopelessly lost, he would, by a sudden thought —a skillful change of procedure—turn defeat into victory. Hence his greatest strength as a lawyer was before a jury; and yet he could successfully conduct a close legal argument. He could be successful in those cases where the law is illumined by nothing save the beauty of logic, the power of reason and the force of analysis. "He could detect the sophistries, dissipate the obscurities, obviate the doubts and disen-

tangle the subtleties in which zealous ingenuity involved a case. In the trial or argument of a cause he always controlled his temper. But meanness, treachery or fraud, touched by his sarcasm, started into their naked deformity. Often affectation and hypocrisy would writhe under the lash of his irony."

But usually, his arguments were conducted with a direct and sober earnestness, and so framed as to convince rather than amuse. Though frequently persistent and importunate, in urging his points before a court, yet his courtesy and ready wit protected him from anything like arrogance or impudence. It is related of him, that upon one occasion, while engaged in the trial of an important case, before a distinguished judge with whom he had always been on terms of great intimacy, he offered certain evidence, to which the counsel opposed objected. The judge sustained the objection, ruling that the evidence was inadmissible. But Hathaway was not thus easily to be disposed of, and he made a desperate struggle to give the evidence to the jury.

"Will your honor allow me to state another reason why I deem the evidence proper?" said he.

"Certainly," said the judge, and the reason was given with great ingenuity and force.

"Still I think the testimony should not be received, even in that view of the case," said the judge, stating the grounds upon which he founded his opinion.

"But perhaps there is another view of the case, which if your honor will allow me to suggest it, may obviate the difficulty in your honor's mind," said the colonel.

"I will hear you," said the judge, "although it is clear to my mind, that the testimony cannot be received in any point of view."

Hathaway presented a new theory as to the admissibility of the evidence, explaining his position at some length. But the judge was inflexible, and ordered the counsel to proceed with the cause.

"I am so confident that this evidence should be received," said the persisting counsel, "that I wish to be heard further."

The patience of the judge was now exhausted.

"Colonel Hathaway," said he, quite sharply; "what do you think I am sitting here for?"

"Now your honor has got me," said the colonel, with one of his peculiar smiles.

The infinite good humor and piquancy of this reply, set the bar, spectators, and jury in a roar of laughter, in which it was difficult for the judge himself, who loved a joke, to refrain from joining. With great gravity and dignity, however, he ordered the counsel to proceed with the cause.

Mr. Hathaway disliked all pretension, conceit, and pedantry; he had a particular hatred for all far-fetched phraseology. He was engaged in trying a case of malpractice, when a very pretentious M. D. was introduced as a witness against his client. While giving his testimony, the doctor removed his glasses, and assuming a very pompous manner, said:

"Mr. Hathaway, I see, sir, that you do not understand the agglutination in cases of chronic peritonitis."

The counsel made no reply at the time; but in the course of his remarks to the jury, he said:

"Gentlemen, Doctor S—— has very frankly informed me that I am entirely ignorant of what he calls, 'agglutination in a case of chronic peritonitis.' I really think the doctor is in the same condition himself. He reminds me of another learned member of his profession, who, more frank than our doctor here, said to a lawyer one day: 'Esquire, I cannot comprehend what you meant yesterday, when you talked about *docking an entail.*'"

"My dear doctor," replied the lawyer, "I don't wonder at that. I will explain the meaning; it is, doctor, doing what you never can do—*it is effecting a recovery.*"

It is said by De Tocqueville, in his Democracy in America, "That the special information which lawyers receive from their studies, insures them a separate station in society, and that they constitute a sort of privileged body, in the scale of intelligence. This notion of their superiority constantly recurs to them in the practice of their profession. They are the masters of a science, which is necessary, but which is not generally understood. They serve as arbiters between the citizens, and the habit of directing the blind passions of the parties in litigation, inspires them with a certain contempt for the multitude." Although this is the opinion which one of the ablest and most distinguished French advocates and writers conceived of the American bar, yet it must be taken with many exceptions. The class of lawyers which came under his observation while in the United States, might justify this statement. But that class who are justly regarded as the ornaments of our bar, and of which Hathaway was a representative, are so nearly allied to the people, that they cannot arrogate to themselves any such superiority as is conceded to them by De Tocqueville. It is a distinguishing feature of the American lawyers, that they unite with their fellow citizens, in all that advances and promotes the progress of society; believing that to be distinguished and great, they must serve, instead of ruling their fellow citizens.

In person Colonel Hathaway was above the middle size. His form was well proportioned, erect and manly. In contests of the forum, in the excitement of debate, there was a lustre in his eye, an eloquence in his look, a dignity in his manner, which riveted attention. His voice was flexible, under good management, and easily accommodated to the sentiment he was desirous of expressing. In hours of relaxation from business, he was characterized by benignity and mildness; no one who ever met him in a friendly circle, can easily forget the attraction of his

manner and conversation. He carried into society a cheerfulness and sunshine of soul, that rendered him a pleasing associate, a companion of inestimable value. Possessing an inexhaustible fund of anecdotes, and an inimitable manner of relation, he never failed to delight and interest when telling them.

In the summer of 1862, Mr. Hathaway entered the service of the United States as colonel of the 141st Regiment N. Y. S. V. In the language of one of his eulogists, "It was urged upon him, that in the depleted state of this and adjacent counties, the regiment could not be filled without the imprimatur of his name. He gave it, and after having received his commission, and publicly announced his intention to go to the field, eighteen companies sprang into being, as if by magic, each one striving to be one of the ten who should march to battle under the colors of Colonel Hathaway."

On the 15th of September, 1862, his regiment left Elmira and moved to the front. As soon as he decided to enter the service he directed all the energies of his mind and talents towards perfecting himself in military knowledge and discipline. Having, however, served some time as an officer under his father, he was not without military experience. By the time his regiment was ready to move, few persons in the volunteer service were more thoroughly qualified for the field than he, evincing, that like many members of the bar, who have left the forum for the field, he could entwine the laurels of Justinian with those of the soldier. As an evidence of his military capacity he was soon placed in command of the Second Brigade of Abercrombie's Division, as acting brigadier-general; a position which he filled with great credit to himself and satisfaction to those under his command. With him the common soldier was as much the object of his solicitude and care as he upon whose shoulders glittered the badge of superiority and command. "Himself as sensitive as a

woman, he invariably extended to others the same high-toned treatment which he demanded for himself." Such characteristics could not fail to render him a popular commander.

But the fatigues and exposures of camp life soon produced a disease of the heart, which at length compelled him to leave the service. Early in 1863, with great reluctance, he left his regiment and returned to Elmira. The scene of parting with his officers and men has been described as extremely affecting. "I leave you," said he, as if speaking with a prophetic view of his approaching death, "I leave you, perhaps to die at home, far from the scenes of war and strife. But had it pleased Heaven to have directed otherwise, I could have wished for another fate; I could have wished to have died leading you to battle and to victory. But wherever I go, in health, in sickness, in all that awaits me in life, I shall watch with unceasing interest your welfare as a regiment and as individuals; and when war's trials, dangers and sacrifices are over, with duties well done, that you may be gathered to happy homes in the bosom of peace, duly remembered by a grateful country, will ever be the prayer of him who can command you no more."

On many a war-worn cheek tears glistened as Hathaway rode from the camp, never again to return. On many a weary march, on many a blood-stained field, amid the harvest of death, his regiment gloriously sustained itself. But many, ah! how many, who marched with Hathaway from their beautiful camping-grounds at Elmira, fell, where showered

> "The death-bolts deadliest, the thinn'd files along,
> Even where the thickest of war's tempest lowered."

True to their duty, true to their country, they died "upon the ark of her magnificent and awful cause;" then let them not be forgotten; for in their blood are laid our nation's altars. Let us remember that in

their once happy homes a something that vibrated with joy on the heart is still, "and the magic of the voyage of life is no more."

After his return to Elmira, Colonel Hathaway placed himself under the care of a distinguished physician of that city; but as his disease had become so firmly seated that it would not yield to medical treatment, under the advice of his physician he sought the home of his father, in Cortland county. He arrived there in the beginning of March, 1864. He lingered, in dignified submission to that Good Being, "Who has been our refuge from one generation to another," and his submission was entire; there was no alloy of impatience or distrust. He looked upon approaching death with the calmness of a philosopher, the resignation of a martyr, the confidence and hope of a Christian, whose silent communion with his God, whose secret prayers were the votive and acceptable offering of a heart and soul turned from the withering and fading scenes of the world to Him who is the fullness and source of life, thought, beauty, power, love and happiness.

Will it be said that Hathaway was not a professing Christian? Those who knew him best, early learned that within his heart there was a spot sacred to Christian ingenuousness and sincerity. But it never was polluted by pretense, by affected fervor, by cant and fictitious zeal, for he believed that truth is "an emanation from God, a beam of His wisdom, and as immutable as its source." The scene of his sickness and suffering developed his religion, and he bowed to the will of his Maker without a murmur. "I am in God's hands, and His will be done," were sentiments which he uttered, not with commonplace and mechanical formality, but issuing, as his tones and countenance discovered, from the very depths of his heart. Thus he bore his long and painful sickness. During all his illness it was his constant wish that he might die in the morning; and there ever came to him a soft weird

whisper that his prayer would be granted. Was it the voice of unseen spirits hovering near—of loved and lost ones of other days, waiting for him on the confines of eternity?

As the 15th day of April, 1864, drew to a close, a beautiful sunset lingered upon the landscape in front of his room. He watched it until the last rays faded away; then whispering to those standing by, he said:

"So the sun of my life goes down, but it will rise again to-morrow."

The morrow came, and with its first bright sunbeams death came as gently, as softly, almost as sweetly as that glorious sunlight fell upon the morning air. And thus, in the fifty-second year of his age, died Colonel Samuel G. Hathaway.

He was endowed with a liberal heart—with generous and high-toned sentiments—with a mind keenly attuned to every sense of honor—with a modesty that redeemed him from envy—a geniality which made him welcome in every circle. Whatever were his faults, they floated only on the surface of his character; they could not live in the recesses of a heart like his. As the dew-drops will dim the polished surface of the Damascus blade, but leave no mark on dull, rough iron, so the polished and graceful cast of his mind made error more conspicuous in him than in coarser minds; for, in common with all that is mortal, he had faults—perhaps many—who has not? "Still, they are but the fragments that surround the lofty edifice in its admirable whole—the broken frieze torn from its pediment, leaving still the glory and the grandeur of the Parthenon."

JOHN C. SPENCER.

Compared with Ogden Hoffman, Lord Tenterden, and Thomas Noon Talfourd.—His Intellectual Qualities as Exhibited in his Speeches and Writings.—His Manners.—Interview with General Root.—His Birth.—Was a Son of Ambrose Spencer.—The Society of his Early Years.—His Education.—Manner of his First Acquaintance with Dr. Nott.—His Friendship for the Doctor Exhibited at a Late Period of his Life.—Commences the Study of Law with his Father.—Character of Ambrose Spencer.—Young Spencer Appointed Governor Tompkins' Private Secretary.—Makes the Acquaintance and Gains the Friendship of President Madison.—Is Admitted to the Bar.—His Marriage.—Removes to Canandaigua.—General Peter B. Porter.—Spencer's First Experience in Housekeeping.—Ontario County in 1810.—Mr. Spencer's First Appearance at its Bar.—His Politics.—The War of 1812.—He Sustains Madison and Tompkins.—His Popularity as a Writer.—His Pamphlets in England.—Joins the Staff of General McClure and Enters the Service.—His Fellow Staff Officers.—Appointed United States Assessor.—Retires from the Service.—Appointed by Mr. Tompkins District-Attorney for Five Western Counties.—Amusing Anecdote.—His Name not Relished.—Spencer Elected to Congress.—Tammany Society.—Buck Tail Party.—De Witt Clinton.—His Life Intimately Connected with Spencer's.—Candidate for United States Senator.—Rufus King is Elected.—Spencer Elected Member of the Assembly.—Chosen Speaker.—Compared with Calhoun.—His Career in the Legislature.—John T. Irving, Elisha Williams, Gulian C. Verplanck.—Legislature Adjourns amid a Storm.—Spencer Re-elected to the Assembly of 1821.—Defeated for Speaker.—Singular Career.—Resumes the Practice of his Profession.—Clinton Dismissed from the Office of Canal Commissioner.—Public Indignation.—Alfred Conkling.—Mr. Spencer Elected to the Senate.—Heman J. Redfield.—Lieutenant-Governor Talmadge.—His Hostility to Clinton.—Held in check by John C. Spencer.—Anecdote.—The Secret Pamphlet.—The Discovery.—The Check.—Ambrose Spencer a Candidate for United States Senator.—Singular manner of his Defeat.—No Choice.—Nathan Sandford Elected United States Senator, next Year.—His Character.—Judge Kent.—Spencer's Professional Duties.—Holland Land Company.—Spencer's Remarkable Report upon the Title to its Lands.—Effect of the Report.—His Report on the School Question.—Political Prospects of Clinton and Spencer.—Description of Clinton's Death.—The Effect.—Spencer Appointed one of the Revisers.—Benjamin F. Butler.—John C. Duer.—Henry Wheaton.—The Labors of the Revisers.—The Statutes compared with other Written Laws.—Objections to It.—Abduction of Morgan.—Daniel Mosely.—Appointed Special Prosecutor in the Morgan Case.—Appointed Circuit Judge.—Spencer Succeeds him as Special District-Attorney.—Enters on his Duties.—His threatened Assassination.—The Anonymous Letters.—The attempted Assassination.—Case of Mather.—Of Jewett.—Trial of the Former.—Is Discharged.—Trial of Jewett.—Is Acquitted.—Reasons Why.—Spencer's Resignation as Special District-Attorney.—Unites with the Anti-Masonic Party.—Its Leaders.—William H. Seward, Thurlow Weed, Frederick Whittlesey, Bates Cook.—Spencer's Subsequent Political Career.—Connection with the Whig Party.—Removes to Albany.—Appointed

Secretary of State.—A Member of President Tyler's Cabinet.—Advocates the Election of Taylor and Scott.—Is Appointed one of the Codifying Commissioners.—Declines.—His Characteristics.—His Personal Appearance.—Private and Public Charities.—Founds the Albany Hospital.—The State Idiot Asylum.—His Regard for his Native State.—His Death.

It has been said by an eminent English writer, that Macaulay was the philosopher and Lamartine the poet of history. With equal propriety may it be said, that Jonn C. Spencer was the philosopher and Ogden Hoffman the poet of the New York bar. Not that the latter, like Talfourd, actually divided his time between law and poetry; not that he, like Lord Tenderden was more "proud of his iambics and hexameters" than of his triumphs at the bar. Yet Mr. Hoffman did not yield to the opinion, that legal arguments and forensic efforts require no decoration of elocution to render them forcible and effective. He did not, therefore, endeavor to emancipate himself from all oratorical rules; but he knew how to adapt his elocution to profundity and comprehensiveness; to the rules of logic; to the philosophy of "the dull black letter of the law." Often, however, before a jury, his vivacity—his facility of sentiment—his power of picturesque illustration—his pathos, aroused emotions something like those created by the inspiration of the poet.

The meditative character of Mr. Spencer's mind led him to philosophic disquisitions—to the contemplations of the abstract student—to the coinage of logical deductions. His mind did not "work by sudden and strong impulses, leaping with irresistible force to its conclusions, but by calm and laborious processes, tending silently, yet surely, thereto." He was not easily excited by the delicate and exquisite beauties of poesy; he never indulged in a variety of imagery —in flights of fancy—in touches of pathos. Therefore his speeches at the bar, in the popular assembly, in legislative bodies, were delivered in language severely correct, scrupulously pure, but free from all

rhetorical drapery. He possessed the power of giving an ethical interest to his subject—of penetrating deeply into it—of establishing, by the clearest and subtlest train of reasoning, those delicate lines which divide apparently analogous precedents.

Another feature of Mr. Spencer's mind was the singular sagacity with which he seized upon questions of fact, the facility with which he disentangled the point in dispute from sophistry and error, and reduced a perplexed and elaborate question of law to a plain problem of common sense. Thus, without the magic of Mr. Hoffman's eloquence, he was as powerful and as successful before a jury as he was before those courts where nothing but plain questions of law are discussed and settled. This was fully demonstrated by the manner in which he conducted the great case of the People *v.* How, at Angelica, in 1824. This was a case peculiarly adapted to the facile and kindling eloquence of Hoffman, but which was managed with signal success by the unimpassioned Spencer, who, by the force of reason and argument alone, overthrew the hypotheses on which was built a powerful and brilliant defense.

When Talfourd took his pen, he became the critical essayist—the poet, who, with strong or delicate touches, impressed, as it were, his own vivid mind on the scenes which he described—the dramatist, whose creative imagination caught a hint from Euripides, and gave "Ion, a play of destiny," to the world; the writer of those sonnets, which are tinged with the style of Wordsworth, who was his ideal of a poet. When Mr. Spencer wrote, as he often did, his pen was an instrument of his great logical powers. The merit of his style as a writer consisted in the facility and perspicuity with which he reasoned, explained, or described.

All his written productions bear the impress of the same powerful and philosophic intellect which characterize his legal and legislative speeches. This is

manifested in the revision of the New York Statutes, those lasting monuments of the legal learning and research of himself and his co-revisers; in reviewing, criticising, and annotating De Tocqueville's great work on American Democracy; in writing those legal arguments which often enlightened judges, and determined the decisions of courts; in those elaborately written pamphlets, which operated with such effect on the public mind; and in those legislative reports and documents, which so plainly evince his ability as a statesman.

As there was no man that ever made less parade of his intellectual endowments, there were few less disposed to tolerate learned vanity in others, and he often rebuked ostentatious pedantry and empirical impudence with a caustic pen and a satirical tongue which gained him bitter enemies.

The apparent austerity and haughtiness of his manner detracted something from his popularity, yet he was, for many years, a successful and leading politician in the State. Such was the respect which the people entertained for his ability and his unfaltering honesty, that they forgave his faults, and the many unpopular traits in his character. When before them as a candidate for official position, he never failed to receive the strong support of his party. By a popular vote, he was repeatedly elected member of Assembly, State senator, and representative in Congress.

Soon after Mr. Spencer was elected speaker of the Assembly in 1820, Erastus Root met him on the steps of the capitol:

"Spencer," said he, "if you would only see people whom you meet; if you would get rid of your confounded haughtiness, you would soon become more popular in the State than Tompkins ever was; but as it is, everybody is afraid of you; they think you sour, proud, and crusty."

"Why, Mr. Root, I do see people when I meet them, but nature never made a Chesterfield of me; I

like people, and do not mean to be haughty; at any rate, I do not feel so," said Spencer.

"I beg your pardon, but you do not see people when you meet them," said Root; "for instance, I saw Dr. Miller, from Cortland, this morning, and he told me that you don't pretend to notice him, when you meet him: and only yesterday I met you on State-street, and although I gave you one of my best bows, I never received so much as a nod from you."

"Why really, Mr. Root, I have not the least recollection of meeting you yesterday on State-street or anywhere else," was the reply.

"I know that, and I know how to excuse your abstracted thoughts. When you met me yesterday, you were studying out the argument which you are to make next week in the Court of Errors against me; but the people, our sovereigns, Mr. Spencer, don't understand these matters. They are imperious; they must have a nod, or a bow, on all occasions, or else we are guilty of rebellion to sovereign majesty. So, learn to bow to everybody, for it is the court etiquette of the day, and makes great men out of well dressed nobodies," said Mr. Root.

John C. Spencer was born at Hudson, New York, August 12th, 1786. He was a son of Ambrose Spencer, distinguished in the history of the State of New York as the able and gifted compeer of Schuyler, Hamilton, Burr, Jay, Clinton, Tompkins, and those other great men, whose elevated patriotism, whose vigorous and comprehensive minds, adapted them to that critical period in the history of the nation, which succeeded the adoption of the first Constitution.

From his earliest years, young Spencer was accustomed to the society of distinguished, learned, and gifted men. His first knowledge of politics was drawn from witnessing those vindictive partizan contests inaugurated by Burr and Hamilton.

He inherited the great abilities, the inflexible will, and many of the imperfections of his father.

At a very early age, he was sent to the Hudson Academy, where his active mind exhibited itself in the rapid proficiency which he made in his studies. Three years at this school completed his preparatory course, and in the year 1799 he entered Union College. During his first year in that institution he was one of the disputants in a debate which took place in the presence of Dr. Nott, afterwards, and for many years, the distinguished president of that college. In the course of the discussion, he indicated that dominant taste for philosophic research, that happy faculty of bringing ancient parallels to bear on contemporary events, which distinguished him in after life. Such was the ability and tact which he exhibited on this occasion, that Dr. Nott conceived for him an admiration which resulted in a life-long friendship.

It is a singular circumstance that the last professional service ever performed by Mr. Spencer was in the defense of this early friend. The work which he did on that occasion was the offspring of the most disinterested friendship, prompted by those precious remembrances of the past so sacred to sensitive minds. The powerful legal gladiator had retired from the bar and from public life; but the appeal of his venerable friend reached him in his retreat, summoning him again to the forum, where his victorious logic exhibited the unimpaired powers of his intellect. But his victory was dearly won. Such was the ardor with which he entered that contest, such the mental labor which it forced upon him, that his health was greatly impaired, and he was soon hurried to the tomb.

No victory won amid the ambitious struggles of his youth or middle age, was more brilliant or more gratifying to him. But it was not the pleasure resulting from the triumph of professional success that gave such peculiar zest to this victory; it was the consciousness that he had aided in the triumph of a friend: that "it was a votive offering laid on the altar of friendship."

It may have called forth censure and criticism from cold and callous casuists, raised murmurs of reproach from defeated interests; but those who, amid the sordid policies, the pitiable selfishness of this wrong world, can appreciate generosity, can understand the emotions inspired by real friendship, will see in this last act of John C. Spencer all that is great in the hero, all that is magnanimous in the martyr.

While at college young Spencer was distinguished for close and thorough application to his studies, for the same thoughtful reserve, the same unpopular reticence, which marked his character as the lawyer, legislator and cabinet minister. In July, 1803, at the age of seventeen, he graduated with honor, and immediately commenced the study of law with his father.

Ambrose Spencer was then attorney-general of the State, in the plenitude of that political and professional career, which renders him a marked and striking character in the history of the State. An accurate reader of men, a keen discerner of those motives which prompt them to action, he could penetrate, by a kind of intuition, into their deeper and more hidden interests. Calm, sagacious, designing and ambitious, he possessed abilities which would have rendered him all-powerful at the court of the Eleventh Louis, and elevated him to a high position in any age. Moved by a will of iron, and prompted by a determined nature, it is not strange that he attained a commanding influence in the age in which he lived.

He was a brother-in-law of De Witt Clinton, whom he opposed, or with whom he coincided, as ambition or resentment dictated. That he often successfully opposed his illustrious and powerful brother-in-law, sufficiently attests the strength of his character and the power of his influence.

Amid the sharp political controversies of his day, he was often attacked through the press by able and powerful opponents; but as he wielded a gigantic pen,

from whose point there flowed a subtle logic, a withering, though polished sarcasm, he was understood to be a dangerous foe in that field of warfare.

At the close of the year 1803, he was appointed by Governor George Clinton a justice of the Supreme Court, and some years later he was advanced to the dignity of chief justice of the State, a position which he held until after the Convention of 1821. Thus, through the long period of over twenty years, he pronounced from the bench of the Supreme Court those opinions which have enriched the legal learning, not only of the State, but the Nation, and characterized him as one of the ablest lawyers and most accomplished judges of his age.

As a writer, he aimed at no graces of language or ornamented diction, and yet his style was of almost crystalline purity—of inherent dignity, and replete with learning.

His manner while on the bench was grave, dignified, austere, stern and decided, but always impartial. He permitted no familiar approach, no importunity from counsel. Lawyers who addressed him used the most respectful language, while he in turn observed a high-toned courtesy toward the bar. In demanding and observing these amenities, Judge Spencer did not stand alone. The judges as well as the lawyers of that period observed and maintained a dignity in the court room which rendered all present conscious that they were in the temple of justice.

Judge Spencer doubted the propriety of innovation in the arrangement of the courts or in the administration of justice. Every encroachment upon the independence of the judiciary he regarded as a step taken toward the disintegration of our legal system and the destruction of our rights.

His imperious nature, his ambition—the means to which he sometimes resorted to gratify it—his unrelenting hatred to his enemies, were among his faults as a politician and legislator. None of these, how-

ever, affected him in the discharge of his judicial duties; and yet as a judge he was not entirely faultless. Such was Ambrose Spencer. From whatever point of view we may examine the character of this extraordinary man—whether as a scholar, lawyer, statesman or judge—although imperfections and errors will be observed—still he must be regarded as one of the great luminaries which have adorned the bench and the bar of the Empire State.

After pursuing his studies for some time with his father, young Spencer was appointed by Governor Tompkins his private secretary. He discharged the duties of this position so acceptably that he became an especial favorite with the governor for life. But, desiring to complete his legal studies, he returned to the office of his father before the expiration of Mr. Tompkins' official term. In 1807, when Mr. Madison was elected president of the United States, he was selected by the electoral college of the State to carry its vote to Washington; and before his return he made the acquaintance of the president elect—an acquaintance which through life was profitable and agreeable to both parties. Thus Mr. Spencer entered public life in his extreme youth, and continued in it until the shades of old age fell upon him.

After his return from Washington he continued his legal studies, without interruption, until July, 1809, when he was called to the bar. Very soon after this event he was united by marriage to a daughter of James Scott Smith, a highly respectable citizen of New York city. Miss Smith was a young lady of rare accomplishments, possessing that high cast of character which eminently qualified her for the wife of John C. Spencer.

At this period western New York began to attract the attention of the adventurous spirit of the East. It was then a comparatively uninhabited country; still the home and the hunting grounds of the aborigines. Among those who decided upon emigrating to that

country, which promised so much to industry and enterprise, was Mr. Spencer. Accordingly, early in September, 1809, accompanied by his bride, he set out for the land of lakes and rivers. After a long and weary journey they reached Canandaigua. The charming country, enlivened by the beauties of early autumn, the prospect of its rapid advancement in cultivation and improvement, and the beautiful location of the village, determined him to make it his future home.

He was then in the twenty-fourth year of his age—in that period of life which intervenes between the effervescence of youth and the practicable energy of manhood. He possessed, however, those qualities of sagacity and learning which were beyond his years. With a few law books and fifteen dollars in money, he commenced that professional career which rendered his name memorable in the history of his native State.

The only boarding place which he could obtain in the village for himself and wife, was in the family of a Mr. Bates, then the keeper of the county jail; and within a few days after their arrival at Canandaigua, they were comfortably domesticated in pleasant rooms in the Ontario county prison.

"I have brought you a long way from your home only to lodge you in jail at last," said Mr. Spencer playfully to his wife, on taking possession of their room.

"Yes; but it will be a delightful captivity, since you are to share my prison with me; for you know, Spencer, that I am, for the remainder of my life, to play Ruth to your Boaz," was the pleasing reply.

Mr. Spencer soon rented an office, took possession, and arranged it. With some pride he affixed on its door his sign, with the words "J. C. Spencer, Attorney at Law," on its surface. The next spring, through the undeviating kindness of the man who never forgot

a friend, Daniel D. Tompkins, he was enabled to have the words "and Master in Chancery," placed upon it.

Among the early friends of Mr. Spencer, at Canandaigua, was General Peter B. Porter, long and favorably known in the history of the State, as a man of high character and unsullied honor, who quietly, and without parade or ostentation, rendered himself of much importance in public affairs—whose influence, like the powers in the natural world, was mild and noiseless, but penetrating and enduring—an accurate observer of men, yet simple and natural in his manners, uniting habits of economy with the most disinterested and liberal charities. A pioneer of western New York, his energetic and enterprising character materially aided in the development of the resources of that beautiful country.

During the autumn of 1809, General Porter completed a very commodious residence in the village, which he leased to Mr. Spencer, and in which he first commenced the duties and responsibilities of housekeeping. In after years he frequently described, in lively language, the first dinner of which he partook in this his "own hired house."

"It was eaten off from a common kitchen table. I was seated on a cheap old-fashioned chair, and Mrs. Spencer occupied a common wooden stool. But every thing on the table, though simple, was nicely cooked, and we enjoyed our meal with a relish rarely equaled at the more sumptuous repasts of our prosperous days."

Thus, with frugality, economy, and self-reliance, the young couple entered life's great contest, and thus they became successful in the struggle.

Within six months after taking possession of this house, as a tenant, Mr. Spencer became the purchaser of it, and for twenty-six years and upwards, it was his home.

In 1809, Ontario county contained within its limits all that territory now included in the counties of Yates

and Wayne, together with all that part of Monroe and Livingston lying east of the Genesee river. From a very early period its bar has been distinguished for the eloquence and learning of its members. A long line of brilliant names adorn its history, many of whom were rendered, by nature and art, almost perfect legal orators, whose eloquence "led criticism itself captive," and who could touch, "with a strong and certain hand, any chord, from uproarious merriment to the deepest pathos, or the most terrible invective."

That Mr. Spencer was able, while yet in his youth, to attain the highest professional distinction, opposed by such competitors, sufficiently attests his ability.

Nothing, however, is so favorable to the development of real ability, nothing so essentially elicits the intellectual strength of young lawyers, as constant intercourse and collision with advocates of superior legal attainments and skill. The contest may at first be unequal, may often result in discomfiture and mortification, but with every failure, strength and confidence will be gained, close study and research resorted to, and at length the nicely graduated scale of professional success easily ascended.

When the great Scottish lawyer, Cockburn, was called to the bar—young, obscure, and diffident—he was compelled to struggle with those giants of the Scottish bar, Clerk, Cranstoun, Moncreiff and Fullerton. Though their inferior in age, in legal knowledge and juridical power, yet, bracing himself for the contest, he boldly entered the lists against them. Regarding it no disgrace to be conquered by such antagonists, he continued the struggle until he was able to maintain his ground, and at length to successfully contend with them. His success shed such lustre upon his name that he soon reached the bench, where, as has been well said of him, "his reputation and efficiency were unequaled."

When Mr. Spencer first appeared at the Ontario

bar, he was the only Democratic or anti-federal lawyer who appeared there. Unappalled by the influence, numbers, and strength of the opposition, and scorning the weak advantage of belonging to "the popular side," he boldly declared his principles, then ably and manfully maintained them, and thus he soon became the standard-bearer of his party in western New York. "Much of the litigation of that day was occasioned by party collisions, and he therefore encountered, from the beginning, a combined opposition, which taxed to the uttermost his 'iron will,' rendering it necessary for him to enter court perfectly prepared at all points; and he found it necessary to be constantly on his guard against the attacks of his political, as well as his professional opponents, to whom he was especially distant and repulsive in his manners." This state of things, however, polished and sharpened the weapons he was compelled to wield; it taught him to parry as well as to thrust, and he rapidly advanced in his profession.

Mr. Spencer always loved solitary study; he never delighted in what is called fashionable life. A mind given to research will see in that society—where persons have no other occupation than fashionable amusement—acuteness of intellect, refinement of manners, elegance and good taste in a certain kind of conversation; but he will also see all profundity of thought, all serious reflections discarded, and hence the glossy volubility of a fop in such circles is preferred to the recondite conversation of the really intelligent and learned.

Accustomed from his youth to the detail of politics, the lawyer was soon blended with the politician. Political dissensions ran high, and were characterized by great bitterness; party feuds were not then as soon forgotten as they are at the present. The easy, gliding scale of political conscience, the temporizing, trimming, bartering policy of modern partisans were then unknown; a rigid fealty to party; an honest, though

bitter opposition; an implacable, unswerving warfare, guided the politician of that day, often engendering feelings of hostility which tinged the amenities of social life for many years.

When the questions and events which led to the war of 1812 began to agitate the public mind, Mr. Spencer, stimulated by an inherent patriotism, joined his fortunes to the party which favored resistance to British aggression, and when war was finally declared, he became the firm supporter of Madison and Tompkins. There were few men at that time who exerted a wider or more direct influence than John C. Spencer. His vigorous mind, his ready and powerful pen, were devoted to the discussion of the great questions which divided the public mind.

One of the pamphlets published by him, entitled "The probable Results of a War with England," attracted much interest throughout the nation; and in Great Britain it was republished in the papers opposed to the ministry, as an unanswerable argument against the policy of the American war.

"Who does not see," said one of the leading oppo sition journals of the day, "the fatal truths contained in Mr. Spencer's article on the results of this war? If there are those so perverse that they cannot see, its truths will, in time, be brought home to the government, when it is, perhaps, too late. There is not an individual, who has attended at all to the dispute with the United States, who does not see that it has been embittered from the first, and wantonly urged on by those who, for the sake of their own aggrandizement, are willing to plunge their own country in all the evils portrayed by the American writer."

Soon after the appearance of this pamphlet, Mr. Spencer wrote another, on The Pretensions of England as to the Right of Searching American Vessels on the High Seas; which contained a strong and an exhaustive argument against that assumed right. This pamphlet, together with a speech made by John Ran-

dolph, in Congress, previous to its appearance, on The Neutrality Question, greatly influenced our government in its policy on the question of the right of search, and in resisting it. The speech of Mr. Randolph and the pamphlet of Mr. Spencer were both republished in England.

It was one of the merits of Mr. Spencer that he entered thoroughly into his subject, leaving no part unexplained—fearing less the imputation of undue minuteness or superfluity than the more serious charge of passing superficially over the topics of discussion.

Sometimes in his anonymous writings there was the crisp denunciation and terse sarcasm of Junius; the close and frigid philosophy of Calhoun; and then the polished rebuke of Addison; and thus the public were often left in doubt as to the real paternity of his many productions.

After the declaration of war Mr. Spencer continued to wield his pen and exert his influence in urging the people to a vigorous support of the government; but, at length, he too was attracted to the field. In the autumn of 1813 he accepted the position of judge-advocate on the staff of Major-General McClure, and with that officer moved to the seat of war on the northern frontier. The staff of General McClure was composed of young men who subsequently attained much eminence, professionally and politically, in the State. John C. Spencer was judge-advocate, as we have seen; William B. Rochester, afterward a circuit judge, and a politician, who in 1825 disputed with De Witt Clinton for the gubernatorial chair of the State, with such chances of success that he was defeated by a very small majority, was aid; Daniel Cruger, in after times a leading lawyer in western New York, speaker of the Assembly, and representative in Congress, was quartermaster; John F. Bacon, subsequently for many years clerk of the Senate, was paymaster; and Doctor James Faulkner, afterward member of Assembly, judge of Livingston county, and

State senator, was surgeon. Doctor Faulkner is the only surviving member of General McClure's military family, and is a resident of Dansville, New York.

After continuing in the service six months, Mr. Spencer was appointed United States assessor, and in accepting this office he was compelled to tender his resignation. Returning home, he entered upon the discharge of the new and responsible duties thus imposed upon him. The office of assessor was created under the act of Congress passed March, 1813, which provided for a direct tax to aid in the prosecution of the war. It was exceedingly odious to the opponents of Mr. Madison, and was anathematized by them as the first steps toward the establishment of a despotic government. It required great firmness and legal exactness to carry this law into effect, but it was fearlessly and accurately carried out by Mr. Spencer.

In February, 1815, he was appointed by Mr. Tompkins district-attorney for the five western counties of the State. In making this appointment the governor, while he in some measure rewarded a faithful and influential friend, recognized the great legal ability of that friend. It was, however, a position of great responsibility and labor. It compelled Mr. Spencer to attend the criminal courts of distant counties, and thus to perform long and tedious journeys on horseback, over roads which were but a slight improvement on the old Indian trails which then intersected the country. But he was adventurous, and at that age when ambition has no bounds, and he entered upon the discharge of his duties with great alacrity.

It is related that, soon after his appointment, while on his way to attend a term of the oyer and terminer at Batavia, night overtook him when within ten or twelve miles of that village, and he was compelled to remain all night at a hotel. During the evening, while seated by the fire which blazed on the large, old-fashioned hearth, two travelers entered and asked for lodging during the night. Matters were soon

arranged between them and the host, and they too found a place by the cheerful fire. In a few moments they fell into conversation, from which Mr. Spencer soon learned that they had been indicted for burning a building; were "out on bail," and now on their way to Batavia, where they were to be tried at the ensuing court.

They made no concealment of their peculiar situation, and continued to converse in a tone which was audible to all in the room. At length one of them, whose name was Benson, remarked that a new district-attorney had been appointed.

"I can't tell what turn our case will take now; Wisner, the old one, was inclined to give us a chance for our lives. Going to be at court this week, sir?" he asked, turning abruptly to Mr. Spencer.

"Yes," was the reply.

"Are you acquainted pretty generally with lawyers about this country?" asked Ford, the companion of Benson.

"I know some of them," said Spencer.

"Do you know the name of this new district-attorney?" asked Ford.

"Yes; his name is Spencer."

"What! not the Spencer that lives at Canandaigua, I hope," said Benson, his eyes dilating with the interest he felt in the question.

"Yes, sir; I think it is the same man."

"Good God! is it possible? Why, I had rather fall into the hands of an Algerine than into his."

"Why so; will he do anything more than his duty, do you think?" asked Spencer.

"Do anything more than his duty! Why, good gracious! from all the accounts I have heard of him, he is a regular Philistine, as sour as vinegar, but as smart as steel. He will go all lengths to send a fellow to State's prison, right or wrong; and then he'll go along with him to see that the key is safely turned on the poor fellow," said Ford.

"Well, well, this is tough enough, tough enough, to be tried for arson, with John C. Spencer against us. Come, Ford, let us go to bed, though I shan't sleep much; and when I do, I shall dream that this Spencer is after me in full chase," said Benson, as he was leaving the room.

During the afternoon of the next day, while Benson and Ford were seated in the court room, Mr. Spencer came in and took a chair among the lawyers in the bar.

"There," whispered Ford to his companion; "there is the man we talked with last night at the tavern, and he is a lawyer, you see. I thought he was, all the time, and I'll bet he is a good one, too."

"So will I," said Benson; "and that tall, spare form and thin face shows that he has got a great, active mass of brains, and that his mind is too strong and active for his body. I wonder who he is?"

Just then Mr. Spencer arose to discuss some question in a civil matter in which he had been retained after his arrival at Batavia, and, as usual, he made an impression upon all in the room.

"There; what did I tell you," said Benson to his companion when the speaker had closed; "he is what you call able and strong, and I am going to have him help our lawyer defend us."

In a short time the business in which Mr. Spencer was engaged being disposed of, he left the bar for the purpose of going to his room below. Benson and his friend followed him into the hall. The former, touching Spencer on the shoulder, said:

"We would like to talk with you a little. Don't you remember us? We were at the hotel with you last night."

"Yes, I remember. What do you wish to say to me?" asked Mr. Spencer.

"Why, you know that we are indicted for burning a building; and as our trial is soon to take place, we

thought we would like to have you assist our lawyer in defending us," said Benson.

"I do not think you want me to defend you."

"Why not?" asked one of them.

"Because I think you do not like my name."

"We don't know nor care what your name is. We like your appearance, and believe you are a dead match for that devilish Spencer that is against us," said Ford.

"Well, we will see; my name is John Spencer."

"Heavens and earth!" exlaimed Ford, recoiling from him in terror, while Benson remained perfectly speechless with fright.

"You see, gentlemen, that my name is not exactly pleasing to you, and our business is doubtless at an end," said Mr. Spencer, preparing to leave them.

"For Heaven's sake, Mr. Spencer," said Ford, "excuse us for our plain talk to you, and—and, don't—don't bear any harder upon us for it, for we —we are not guilty, we"—

"Enough of this," said Spencer, interrupting him. "I shall do my duty, and nothing more; what you have said will make no difference whatever; one thing, however, I will promise not to do—I will not go with you to the State's prison, just to see that the key is safely turned upon you." With this remark he left them. The next morning their trial commenced, but such was the nature of the evidence that the district-attorney himself was convinced that they were not guilty, and consented that a verdict to that effect might be entered, and they were fully discharged.

In the year 1816, while Mr. Spencer was discharging the duties of district-attorney, he was elected a representative in Congress from the 21st congressional district of this State, by the Clintonian party.

For several years there existed an order of the

Tammany Society in the city of New York, whose badge of distinction was a portion of the tail of a deer, worn in their hats. These persons were distinguished for their high social and political position, their eminent abilities, and their hatred to Mr. Clinton. From this order a powerful combination originated, known in history as the Bucktail party. Absorbing all the elements which rivalry, jealousy, and antagonistic ambition had rendered hostile to him, it soon aspired to the control of the State, and its aspirations were at times realized.

The war which it waged against De Witt Clinton has seldom been equaled in the annals of political history; it exhibited all the intolerance of party strife, and the facility with which parties in our country are created. An eminent French writer has said that "In the United States there is no religious animosity, because all religion is respected, and no sect is predominant; there is no jealousy of rank, because the people is everything, and none can contest its authority; there is no public misery to serve as a means of agitation, because the physical position of the country opens so wide a field to industry that man is enabled to accomplish the most surprising undertakings on his own native resources. Nevertheless, ambitious men are interested in the creation of parties, since it is difficult to eject a person from authority upon the mere ground that his place is coveted by others. The skill of the actors in the political world lies, therefore, in the art of creating parties. A political aspirant in the United States begins by discriminating his own interest, and by calculating upon those interests which may be collected around and amalgamated with it; he then contrives to discover some doctrine or principle which may suit the purpose of this new association, and he adopts it in order to bring out his party, and to secure its popularity."

The popularity of Mr. Clinton had placed him in

the way of many ambitious men, and, since it was difficult to eject him from place, a party was created for that purpose. Nothing, however, so surely indicates his great popularity as the strong combinations created for his overthrow, and the singular power with which he so successfully resisted these combinations.

In the contest between the Clintonian and Bucktail party, Mr. Spencer espoused the cause of the former; his name and career is thus so blended with that of De Witt Clinton that it is impossible to consider one apart from the other. The former aided in electing Governor Tompkins vice-president of the United States, while occupying the executive chair of the State; and he sanctioned the policy which placed John Taylor in the chair made vacant by the election of Mr. Tompkins to the vice-presidency.

Notwithstanding the existence of the Bucktail party, the friends of Mr. Clinton nominated him for governor in the fall of 1816; and, as we have seen, Mr. Spencer received the nomination for member of Congress. They were both elected. In the year 1819, while yet in Congress, the Clintonian members of the Legislature nominated Mr. Spencer for United States Senator from this State. Colonel Samuel Young and Rufus King were his opponents. He received sixty-four votes; Colonel Young fifty-seven. The remaining votes were cast for Mr. King, who was elected. The strength which Mr. Spencer exhibited in this contest shows the political popularity which, at that early period of his life, he had attained.

Although one of the youngest members of the House, being only twenty-eight years of age, he occupied a conspicuous position, and was soon regarded as the leader of New York representatives in Congress. In the autumn succeeding the senatorial struggle, while yet in Congress, he was nominated and elected to the Assembly. On the fourth day of

January, 1820, he took his seat in the State Legislature.

As soon as the Assembly was convened, Mr. Spencer's name was announced as a candidate for speaker. By the joint strength of the Clintonians and Federalists, he was elected. His address delivered to the Assembly on assuming the speaker's chair was impressive, firm, and statesmanlike. In the discharge of his duties as presiding officer of a body composed of such eminent men as was the New York Legislature at this time, he occupied a difficult and delicate position. Slenderly provided with those flexible and plastic qualities which constitute the consummate politician, yet, as a presiding officer, he commanded respect, and even admiration. He possessed much of the self-possessed gravity of Calhoun, with more natural suavity than the great Carolinian, whom he resembled in many points of character. "Like the southerner, he was capable, ambitious, indomitable, free from personal vices; deficient, too, like him, in the plastic and congenial qualities that attach followers to party leaders. The versatility of position that marked the career of both was not the result of flexibility of purpose or vacillation of opinion in either; but of powerful ambition, wielding intellect as a weapon, and opening for itself a career wherever it chose."

It is easy to see that these features in his character, combined with certain family influences, caused him to adopt that course which, in the Legislature of 1820, rendered him the leader of the Clintonian and Federal parties.

At this session of the Legislature an opportunity presented itself for Mr. Spencer to do an act of friendship for Governor Tompkins, and he promptly availed himself of it.

During the war of 1812, large sums of money, amounting to several millions, funds of the general government, passed through the hands of the gover-

nor. In the adjustment of his account the action of the State Legislature was invoked. As the governor demanded a commission on the money disbursed by him, a committee, appointed by the Legislature, awarded it to him, directing it to be paid on the order of Archibald McIntyre, then comptroller. But a dispute arising between the governor and Mr. McIntyre, as to the construction of the resolution recommended by the committee, another resolution was introduced into the Assembly, sustaining the comptroller's manner of auditing the amount.

The introduction of this resolution elicited a debate of an exciting and deeply interesting character. It was the great debate of the session. Mr. Spencer, Elisha Williams, General Root, Messrs. Irving and Romaine, of New York city, participated in it. Mr. Spencer strongly favored the law or resolution as Mr. Tompkins construed it, and supported his position in a speech which greatly enhanced his reputation as a legislative debater. He was warmly supported by Elisha Williams, and as strongly opposed by General Root.

At this period, perhaps no men in the State occupied a higher position than Messrs. Williams and Root. The former was one of the ablest lawyers and accomplished speakers then at the bar of the State. So extensive was his reputation that he was frequently retained in trials which occurred in distant counties; and he was now engaged in the city of New York, now in Albany, now in western and now in southern New York. As a lawyer, it is not invidious to say of him that, though surrounded by eminent advocates and civilians, he had few, if any, superiors. As a legislator, the records of the Assembly are the best evidence of his ability. As an indication of his popularity, he represented the county of Columbia in the Legislature eight years, nearly in succession. Nor is this all. After his removal to Albany, the citizens of Columbia county testified their confidence in his in-

tegrity and ability by electing him as their representative in the constitutional convention of 1821—a mark of public favor seldom equaled.

As the biography of General Root appears in another part of this work, it is sufficient to say here, that, in many respects, he was the peer of Elisha Williams.

Mr. Irving was for many years an eminent judge of the New York Court of Common Pleas. To him the State is indebted for the law abolishing judgments for full costs in actions for assault and battery, slander, &c., where nominal damages only were recovered. No matter how frivolous the case, how trivial the offense, in such cases a verdict for six cents insured a recovery of a heavy bill of costs, and hence, the courts in the State were incumbered with a vast amount of petty actions, brought solely for costs.

Judge Irving called the attention of Governor Clinton to this abuse, in an elaborate and ably written memorial, which, on the 10th of February, 1828, was embodied in a special message by the governor, and sent to the Legislature, then in session, and the obnoxious law was repealed. There is another and deeper interest attached to this message; it was the last official act of De Witt Clinton; he died the next morning after sending it to the Legislature.

Samuel B. Romaine was a distinguished member from the city of New York, and subsequently speaker of the Assembly.

Such were the men who participated with Mr. Spencer in the great debate concerning the matters of Governor Tompkins; his position was in the end fully sustained, and his demand for percentage allowed. It was natural that a question containing so many elements of conflicting interest, invested with so many recollections of the recent war, debated by men of such eminent ability, should be memorable in the legislative history of the State.

The legislature of 1820 is characterized for the sin-

gular and bitter party dissensions which divided it. Mr. Spencer, as the leading Clintonian, by his abilities, his influence, his energetic vigor as a partisan, incurred the hatred of Mr. Clinton's enemies to such an extent, that when the time for adjournment approached, they refused to concur in the usual vote of thanks given to the speaker at such times, and the session closed in a storm.

In the autumn of 1820 the enemies of Governor Clinton triumphed in the State, and a Legislature was elected decidedly hostile to him. But John C. Spencer was re-elected; and in him Clinton had a powerful champion. An extra session of the Legislature convened in November for the purpose of choosing presidential electors. Mr. Spencer was again a candidate for speaker at the session of 1821, but as his friends were largely in the minority he was of course defeated.

But, as the acknowledged leader of the Clintonians in the Assembly, he occupied a no less distinguished position. With his large experience as a legislator he often baffled the majority against him, and gained such decisive advantages in those party contests which occurred in the House, that the foundation for the future triumph of his chief was successfully laid. In the bill for the proposed constitutional convention each party saw the germ of future political supremacy, and the struggle was thus intensified. In the debates on this question all the energies of Mr. Spencer's mind were roused, and his intellect never attained higher triumphs than in his replies to his antagonists.

The legislature of New York at this time was graced by men of unusual brilliancy and power. There were then heard the speeches of Gulian C. Verplanck, containing a union of subtlety and grace, of philosophic depth and literary excellence; the florid eloquence of Erastus Root, mingling sagacious and profound principles of constitutional liberty, the in-

herent rights of the people, with the policy of a Richelieu, in a strain of oratory, which flowed naturally, sometimes gracefully, interrupted occasionally by an exaggeration of passion, which exhibited his zeal; the attractive oratory of Elisha Williams, glowing with the strength of his illustrations, the felicity of his expressions, occasionally abounding with an excess of ornament, but replete with reason, which guided and enlightened; and the keen sarcasm, the terse, severe diction of Spencer, in which no redundant word or fanciful expression was permitted, who redeemed the abstruse subjects which he discussed by a union of subtlety and grace, and with the utterances of a mind glowing with thought and research.

After a long contest and various party maneuvers, the bill for the convention passed both branches of the Legislature, and became a law. But, through the management of the Clintonian leaders, it passed in a form that, notwithstanding the great majority against them, they gained as much, if not more, political power than the dominant party.

In due time the convention assembled. It was composed of the ablest and most distinguished men in the State; perhaps, in point of real ability, varied learning, and patriotism, the convention of 1821 has never been equaled by any deliberative body in the State. Its deliberations and proceedings now make a part of history, and most of its actors have left the scenes of earth. How many schemes of ambition and wealth; how many full-blown hopes of power and place; how much transient distinction and ephemeral elevation; how much bartering of all that is lofty and pure for some "bad eminence," has that Assembly chamber witnessed since that convention assembled there? And like scenes are to follow; crowds, impelled by the same ambition—the same schemes—will press on to their destiny—to success and failure—to forgetfulness and oblivion.

After the adjournment of the Legislature of 1821,

Mr. Spencer returned to the practice of his profession, which had now become so extensive that he was compelled to devote his entire attention to it. The reports of the Supreme Court and the Court for the Correction of Errors, through a long series of years, exhibit the large number of cases conducted by him in them. And as they are the expression of extensive legal learning, and involve the consideration of almost every question, which, during that period, was settled by these courts, their examination would be profitable to the legal student.

Mr. Spencer continued steadily devoted to his profession, until the events of 1824 again called him before the people. When the Legislature of that year was on the point of adjournment, a resolution came down from the Senate to the House dismissing Mr. Clinton from the office of canal commissioner. This resolution was promptly passed by the Assembly. As there was no pretense that Mr. Clinton had failed to discharge his duty with fidelity and ability, his dismissal was regarded as a high-handed act of party malevolence; but the act intended to annihilate him was the talisman which restored him again to power. It created the most intense excitement and indignation throughout the State. An immense meeting was held at Albany, at which resolutions of great strength and power denouncing the removal, were unanimously passed.

These resolutions were drawn by Hon. Alfred Conkling, now of Geneseo, N. Y., father of Senator Conkling, then a young but distinguished lawyer, and an intimate friend of Governor Clinton.

He was subsequently appointed by President Adams district judge for the northern district of New York. This appointment was made on the recommendation of Mr. Clinton, then governor of the State, General Van Rensselaer, and other eminent citizens. While in Congress in 1822 and '23, Judge Conkling made the acquaintance of Mr. Adams; a

warm and intimate friendship commenced between them, which ended only with the death of "the old man eloquent." It was, therefore, a pleasure to him, by this appointment, to recognize the eminent legal abilities, profound learning, and purity of character, of his friend from New York.

After serving many years as district judge, winning the admiration and confidence of the bar and the public; after serving his country as minister to a foreign nation, Judge Conkling has retired to that quiet and repose which his life and services so well merit.

So strong was the popular feeling in favor of Mr. Clinton, that in August, 1824, he was nominated for governor. To strengthen him in the western counties, Mr. Spencer was urged to accept the nomination for Senator from the eighth senatorial district. He consented, and both Spencer and Clinton were elected; the latter by a majority so large that, in the facetious language of Dudley Marvin, "he got a larger majority than he would had he ran alone." Once more John C. Spencer became a member of the State Legislature.

As a member of the Court for the Correction of Errors, his legal learning was now exercised judicially, and for four years his opinions pronounced in that court enriched its reports.

Among the eminent men elected to the Senate in the fall of 1824, was Heman J. Redfield, who is now nearly the sole survivor of all the members of the forty-eighth Senate. His recollection of his compeers, and all the events of his active professional and political life is fresh; as he wields a ready and able pen, his description of those days contributed for the various journals of the State, are replete with interest and information. He was an early and an intimate friend of Mr. Spencer.

General Talmadge was elected lieutenant governor by the Clintonians; but the session of 1825 had

hardly commenced, when it became apparent that he, with several of the senators, had become hostile to Mr. Clinton, and determined to thwart all his schemes. This rendered the position of Mr. Spencer in the Senate a fortunate circumstance for the governor; it greatly complicated the labor and responsibility of the former; but his experience, his skill in all parliamentary proceedings, his cool deliberation, his sleepless vigilance, enabled him to neutralize, and often defeat the machinations of the hostile lieutenant-governor and his friends.

It is related, that for some time after the opening of the Legislature, General Talmadge and his friends were engaged in preparing a pamphlet in which Mr. Clinton and his friends were bitterly attacked. It was written with that ingenuity and plausibility, which, to say the least, would have rendered it an unwelcome, if not a dangerous affair; but before it was ready for distribution, Mr. Spencer by some means became aware of its existence, and he obtained a copy of it. To the astonishment of Talmadge, who believed the forthcoming document to be a profound secret, a pamphlet written by the powerful pen of Mr. Spencer appeared before the public. It comptetely outflanked the position of his opponents, and yet it developed nothing which indicated any knowledge of the existence of their engine of attack. Never was there a more complete, or a more skillful refutation than in this instance.

Nothing could exceed the chagrin and indignation of Talmadge when he read Spencer's article. The general was a constant talker; and he never ceased to openly denounce Clinton, and those who sustained him.

"I regard De Witt Clinton," said he, the next morning after the appearance of the pamphlet; "I regard De Witt Clinton as a very dangerous man, whose ambition is more to be feared than Burr's ever was; but he cannot be compared to that dark, de-

signing, ever-plotting Spencer. Why," he continued warmly, "he has the faculty of a magician, joined to all that makes up the character of a Catiline."

The term of service of Rufus King, a senator in Congress, was drawing to a close. Owing to his age, he could not be re-elected. Prominent among those who were named as his successor, was Ambrose Spencer, who since the adoption of the Constitution of 1821, had remained the firm and powerful friend of Mr. Clinton. This brought that eminent personage again before the public.

The first day of February, 1825, was the day fixed by law for the choice of United States senator. On that day an animated contest took place in the Legislature. In the Senate Judge Spencer received the largest number of votes of any one candidate; and a resolution was offered declaring him duly nominated on the part of the Senate; but through the machinations of General Talmadge, the resolution was lost, and that body adjourned.

In the Assembly he received a vote of seventy-seven to forty-five, and he was declared duly nominated. But as the Senate had adjourned without presenting a candidate, no choice for senator was made. This contest was deepened and intensified by the singular presidential canvass which then had commenced throughout the nation.

No senator having been elected during this session, the State of New York was represented in the United States Senate, by Martin Van Buren alone, until February, 1826, when Nathan Sandford was unanimously chosen by the Legislature as the successor of Rufus King.

Mr. Sandford had been appointed chancellor of the State in 1823, as the successor of the illustrious Kent, who had become disqualified from holding the office by age. Though it was the fortune of Chancellor Sandford to succeed one of the most eminent and learned jurists in the nation, he brought to the office

much judicial ability; he had all the technical learning of the bar, where he was conspicuous for his talents, and accustomed to a strict adherence to the technical rules of his own practice. Yet, like Lord Mansfield, he was averse from suffering justice to be entangled in a net of forms; and therefore beheld, in the Court of Chancery, something more than a gigantic compromise. A diligent search through the equity reports of his time will convince the reader of Chancellor Sandford's inherent love of justice, his patience, his learning, and his perfect appreciation of equity "as a system which is equal, just and good, mitigating or moderating the rigors of the common law, where every matter that happens inconsistent with the design of the legislator, or is contrary to natural justice, may find relief;" and therefore he was, in many respects, qualified to succeed "New York's great chancellor."

Mr. Spencer participated in all the contests of the session of 1825. Between his senatorial and professional duties, he was never subjected to more severe and ardent labor than at this period. The Senate adjourned on the 21st of April, 1826, and he was relieved, for a time, of his legislative duties.

About this time an instance occurred, which gave Mr. Spencer additional popularity as a lawyer. For a long time the title of the Holland Land Company to the land in several of the western counties had been involved in some doubt, although really no original title in the State is clearer. After the courts, in several closely-contested suits, at different times, had decided in favor of the company, sustaining their title, the disaffected parties thought proper to bring the subject before the Legislature, which they did in the winter of 1837. A majority of the committee to whom the subject was referred submitted a report favorable to the petitioners. A minority report, drawn by Mr. Spencer, counsel for the company, was also

submitted. That report alone characterizes him as one of the most learned and gifted lawyers of his day.

It was a case which his mind was properly qualified to analyze. He dissipated all doubts that serrounded the claim of title. He applied to every technical point a knowledge of the law, which rendered them plain and clear. Finally, it was perfectly conclusive. All further litigation was arrested—all further legislative action ceased. It quieted the apprehension and doubts of all. It was widely circulated and generally read, gaining for its author the gratitude of all concerned in this great question.

In the autumn of 1826 Mr. Clinton was again elected governor, and he entered on an administration which indicated power and prosperity. Nathaniel Pitcher was elected lieutenant-governor, and Clinton was saved from the hostility of General Talmadge in the senate.

The Legislature of 1826 was not characterized by so much partizan strife as its predecessor, though many of its acts were of the most vital importance to posterity.

On the 4th of February Mr. Spencer, as the chairman of the Committee on Literature and Education, made his celebrated report on that part of the governor's message which related to common schools; and he also reported a bill to increase the common school fund, to promote the education of teachers, and to regulate their appointment. This remarkable report presented many didactic expositions of the wants of the great cause of education, and the interest it holds to human progress. It still remains an enduring monument of well-directed zeal in the public service—of large, comprehensive and practical views of educational improvement, and of the statesmanship of its author. Thus, intensely devoted to his duties as a legislator, one session of the Senate succeeded another, until at length the memorable term of 1828 opened, with every prospect of prosperity, of increas-

ing power to the administration and to Mr. Spencer; but, long before its adjournment, an event occurred, which terminated all the contests and collisions—all the schemes of ambition connected with De Witt Clinton.

On the morning of the 28th of February, 1828, Mr. Clinton arose in his usual health, enjoyed the pleasant scene of the family circle at the breakfast table, joining cheerfully in the conversation that enlivened the meal. When breakfast was over, he spent some time in reading the morning papers, which had just been brought in, and then walked to the executive chamber in the capitol. On his way he met several friends, to whom he gave a salutation more than usually cordial.

Those who saw him in the discharge of his duties that morning, remembered the cheerful manner in which he disposed of them. His usual reticence had passed away, and his conversation flowed pleasantly and agreeably. On his thoughtful face, which would have been a model for Angelo or Raffaelle, so plainly did it speak the dignity of intellect, the impress of care and reflection had for the time given way to a placid look, which told the beholder that all within was peace. Was it the sunset of life, shedding its last radiance where darkness and night were so soon to reign?

He continued in the discharge of his duties until a half hour before the adjournment of the Legislature for the day, when he left the executive room, passed through the vestibule of the capitol, and walked homeward.

At this time, John C. Spencer sat in the Senate chamber, silent, watchful, thoughtful, and formidable, the pillar that supported Clinton's administration—rendered permanent and powerful by the fortunate result of a bitter and fierce contest. He was satisfied with the present, and looked confidently to the future for a still higher political advancement for himself and

his chief. At this time, the Assembly chamber hummed with the usual business of the day.

There was Ogden Hoffman, the charming orator, whose eloquence riveted attention, and drew upon him from gallery and lobby, eager admiring eyes. There too, were Talmadge, Butler, Williams, Skinner, and Emmet; while in the chair, presiding over all, sat Erastus Root, then a gifted statesman, a man of large intellect, pleasing eloquence, and great ambition. He was now in the full success of his political prosperity, looking confidently for higher honors, which he believed the nation was soon to bestow upon him; and thus, amid the great business of legislation, De Witt Clinton passed out of the capitol. How little did he, how little did the busy legislators above him, dream that he was leaving it for ever, that the man around whom all this legislative machinery revolved, in the midst of a career which made "ambition glorious," was even then standing on the brink of the grave.

Once more the statesman reached his home; once more he met his family around the festive board. On leaving the table he sought his study, where he transacted some matters of business, wrote and answered several letters, and then entered into a cheerful conversation with two of his sons who were present. Although the dread messenger was hovering near—even in the room, the conversation flowed on. It was a holy moment—a moment when each word then uttered was to live in the memory of those sons through life, because uttered by a revered and illustrious father on the very portals of the tomb.

Suddenly, while speaking, Mr. Clinton placed his hand upon his breast, complained of a sharp pain—the next instant his head fell backwards; the young men sprang to him, raised his head, but the mute lips —the rigid brow—the dull film that was drawing over his eyes, and the fallen jaw, told them that only the dust of De Witt Clinton was before them.

In a moment, all within the executive mansion was

sorrow, grief, and agony, the great, the brilliant light that illumined it had suddenly gone out. He around whom centered so much love, such deep affection, had left for ever.

Soon the fearful words, "Clinton is dead!" flew over the city; on Change—in the busy mart—in the glittering empire of fashion—where wealth gloated over its glittering heaps, where poverty shrunk from the biting frost—where ambitious schemes were ripening or fading like "the stuff which dreams are made of,"—everywhere, men and women paused, with pallid cheeks and hushed voices, repeated the words, "Clinton is dead."

Then along that wonderful work—the offspring of his genius, that stands as his proudest monument, the gloomy tidings ran, that its great projector was dead—that Clinton was no more; and the State of New York draped itself in mourning for her illustrious son, whose genius had written "*Empire*" on her shield.

The death of Governor Clinton dissolved the party that rallied around him, of which John C. Spencer was the moving spirit, and the scenes of the political drama in the State were shifted for the entrance of new actors.

"Before the death of Clinton, however, he appointed Mr. Spencer to a work with which his reputation will ever be identified—a task eminently congenial to his habits of thought, his extensive knowledge of the law, and his powers of analysis—the revision of the statutes of the State."

The commissioners for the revision first appointed, were John C. Duer, Benjamin F. Butler, and Henry Wheaton. The appointment of the latter, minister of the United States at the court of Prussia, left a vacancy, to which Mr. Spencer was appointed.

It has been said by an eminent commentator, that those who are engaged in the administration of the law are not the most properly qualified to amend it, that the great legal reforms which have been effected

in England were through statesmen, who had, in some measure, outgrown their previous education as lawyers.

The singularity of this remark is the more apparent, when the labors of Brougham and Lyndhurst are remembered. To a practical mind it must appear, that those engaged in the practice of the law can best understand its demands for reform, and more properly appreciate the application and practical nature of proposed amendments to existing laws.

The New York revisers were selected for their high standing as lawyers, under the conviction that their duties demanded the most extensive legal learning. It was a work of great labor, but it was successfully finished; it effected many changes, facilitated many of the operations of the law, and reduced it to a practical system.

Like Justinian, the revisers undertook the great work of methodizing existing laws from those enactments, statutes, and precedents, which were scattered through so many volumes that they may be compared to the "load of many camels."

Compared with the *Edicta Prætorum*, the works of Tribonian and his coadjutors—with the Frederician Code, or the Code Napoleon, the Revised Statutes of the State of New York, as a system of written laws, are vastly superior to them all, and the revisers succeeded in reducing existing laws to a system best calculated to effect the object of all laws, the protection of society.

But on the question of special pleading, they did not escape censure from a class of lawyers, who contend that the statutes did nothing to restore the mathematical perspicuity of that system of pleading—that "the revisers continued the old system of the general issue, as a summary denial of the plaintiff's case, without giving him the least notice on what special defense the defendant intended to rely, instead of pleading specially the substance of his defense." As

has been said by a recent writer, "the revisers of 1828, adopted and continued the common law method of proceeding, letting it stand with the relaxation of its fundamental rules, or the abuses with which it was afflicted in England, and, generally, in our own country. The usage of the original writ was abolished, but the classification of actions, these had originated, and the distribution of the subject of litigation into these, were sedulously retained.

In pleading, several counts to the plaintiff and several pleas to the defendant were allowed, even though there might be but one distinct matter of complaint or defense.

The very same evils, from the very same causes, in England, led to the parliamentary law commission, its investigations, reports, and the remedy; namely, the restoration of the system of special pleading by formula in actions at law."

Though Mr. Wheaton did not participate in the great work of revision, in January, 1836, he gave to the world a work, in many respects, scarcely less meritorious—his *Elements of International Law;* a highly appreciated treatise, "very valuable to persons engaged in diplomatic and other forms of public life."

The labors of Mr. Spencer while in the Senate, were divided between his legislative duties, and as a member of the Court for the Correction of Errors, his judicial duties, and his duties as one of the revisers; but as was said of Lord Eldon, his prodigious industry seemed to rejoice in the accumulation of toils, and he applied himself with unremitting perseverance to every minute portion of each subject, with indomitable energy.

He retired from the Senate on the adjournment of the Legislature in April, 1828, having served in that body since January, 1825, leaving behind him many distinguishing marks of his legislative career: among which, was his action in abolishing imprisonment

for debt—the passage of many acts reforming the laws of the State, which is adequately appreciated by the legal profession; and, while speaker of the House, reducing its business to that systematic detail by which it has been guided since that period. His action as chairman of the Committee on Literature has already been alluded to.

In the year 1826 the abduction of Morgan occasioned great excitement throughout the State, and at length resulted in a new and powerful party. This event is more fully described in another part of this work.

The detection of the perpetrators of that deed was a matter in which the executive, and the various judicial and ministerial officers of the State became deeply interested. Heavy rewards were offered and a secret police organized. Finally, no measure which could possibly tend to the detection of the offenders was omitted.

The late Daniel Mosely was appointed a special prosecuting officer to examine into the offense, and, if possible, bring the culprits to justice.

Mr. Mosely was a strong, effective and learned lawyer of the Onondaga bar. He entered upon the discharge of his duties with an energy which promised the most complete success. Many arrests were made, and in one instance, several of the persons pleaded guilty to the crime of conspiring to abduct Morgan, and were severely punished.

Mr. Mosely continued to discharge his duties as such prosecutor until January, 1829, when he was advanced to the office of circuit judge. Mr. Spencer was immediately appointed his successor by Governor Van Buren.

This appointment was exceedingly gratifying to all parties interested in the conviction of Morgan's destroyers. Spencer's eminent abilities and large experience as a lawyer and public prosecutor warranted the expectation that the matter would be thoroughly

investigated. Under his vigorous measures keen and experienced detectives were employed, and every plan adopted which promised success. Many prominent individuals were arrested and indicted.

The energy and determination with which Mr. Spencer entered upon the duties of his office brought upon him the deep enmity of all persons connected with the Morgan affair. Serious fears were entertained by his friends that he would become the victim of the assassin. These fears were intensified by various anonymous letters which Mr. Spencer received. Some of them admonished him of impending danger, while others contained the most fearful threats. Two of these letters were couched in the following language:

"To JOHN C. SPENCER:

"*Sir*—As you are seeking for the blood of those who never injured you, remember that your own blood will run quite as easily and as red as theirs. Therefore, *Beware!* BEWARE!! REVENGE."

"To HON. JOHN C. SPENCER:

"*Dear Sir*—Your life is in danger! Assassins are upon your track! Do not regard this warning lightly, but look to yourself, for you are watched by secret foes! A FRIEND."

Mr. Spencer himself did not participate in the fears of his friends, and the anonymous letters did not cause him the least uneasiness. But in a short time he was convinced that there was a terrible earnestness connected with them. Two daring attempts to assassinate him followed each other in quick succession, which were providentially thwarted.

One dark evening, as he was returning home from his office, a man armed with a sword drawn from a cane, made a desperate lunge at him, which would have proved fatal had not the man stumbled over a stone as he sprang towards his intended victim,

thereby causing the weapon to miss its aim. Before the attempt could be repeated the assailant was disarmed and arrested; but Mr. Spencer refused to prosecute him, and he was discharged.

Soon after this, he was returning alone from Penn Yan. Night overtook him while yet several miles from home. The evening was pleasant, the road was good, and, absorbed in his thoughts, he rode along unconscious of danger, when suddenly a bullet whistled past his head, and the sharp report of a rifle rang in his ears. Again he escaped unhurt, and redoubling the speed of his horse, he reached home in safety. Soon after this, he received a singular anonymous letter, the words of which many believed to be true. Among other things the letter contained the following:

"It is useless for you to attempt to convict any person for killing Morgan, for he is still alive. He was taken to Canada, the Canada lodges refused to receive him. He was then offered a large sum of money to leave the country forever, and to leave immediately. If he refused, death would follow, sure and certain. As he published his book for money, he was willing to banish himself for a price. He is now in a foreign country, under an assumed name, and he will never be heard from again. 'Murder will out,' they say, but as Morgan was never murdered, in this case there is no murder to come out. Time will pass on, you will go to the grave, and so shall I, and so will all that now live, but it never will turn out that Morgan was murdered.

"INVISIBLE BUT TRUE."

Notwithstanding the threatening letters he had received, notwithstanding the attempts which were made upon his life, Mr. Spencer was not deterred from vigorously discharging his duties. He laid the heavy hand of the law upon those whom he believed to be guilty of participating in the murder of Mor-

gan, and sternly demanded their conviction. Several important trials took place, among which was the case of the People *v.* Mather, and that of the People *v.* Jewett. These trials were the great events of the times.

The former was one of those cases eminently calculated to be influenced by the excitement which pervades the public mind, rendering the administration of justice subservient to the clamors of the populace. But the learned and able judge who presided, felt that "justice is the end of government—the end of civil society." He felt himself to be the organ through which the voice of justice was to be heard—the representative of the law.

So faithfully did he discharge the delicate and responsible duties committed to him, that no political influence, no party dissension or popular clamor tainted the proceedings of the trial; proving that an intelligent, enlightened judiciary is the most imposing, authoritative, and protective branch of a free government "that while partizan zeal expends itself on transient interest, which derives its chief importance from its fealty to party, it is the province of the judiciary to apply those solemn and universal laws of justice on which the life and liberty of every individual essentially depend."

With such a judiciary, the jury teaches every man "not to recoil before the responsibility of his own actions, and impresses him with that manly confidence without which public virtue cannot exist, and invests each citizen with a kind of magistracy."

The address of Mr. Spencer to the jury in the case of Mather, without the passionate invective of Sheridan in his effort against Warren Hastings, was, in reason, unity, force, and intellectual energy, equal, if not superior to that remarkable legal oration.

At last the case was given to the jury, who, after a protracted consultation, rendered a verdict of not guilty. This result considerably irritated Mr. Spen-

cer, for he believed Mather guilty; but those who look on that trial, after the lapse of over forty years, with no knowledge of the passions, the malevolence, the prejudice of the day, will regard it as one of those leading cases in our reports, establishing many philosophic and reasonable precedents; those who turn back the page of history and learn the great public excitement amid which the trial took place, will regard our legal system with veneration—will look upon it as a rock against which the waves of popular commotion will beat in vain.

Not contented with the verdict of the jury, and the various rulings of the court, Mr. Spencer removed the case to the General Term of the Supreme Court, and in September, 1830, it was argued before that tribunal. There, Mr. Spencer contended with all his energy and ability for a new trial; there he again made one of those singularly effective forensic efforts, the result of the amplitude and fertility of his intellect; but a majority of the court was against him, and he was again defeated. With this decision the case of Mather rested for ever.

His trial, however, developed circumstances which pointed strongly to the guilt of others, and the case of the People *v.* Jewett was tried at Lockport. In this case, William L. Marcy, then one of the justices of the Supreme Court, presided, and a scene of turbulent popular excitement again exhibited itself; but it was repelled with calm dignity — with unsurpassed judicial impartiality, by the gifted judge who presided.

This time, the accused was in the grasp of the law, his conviction seemed certain; but the witness who alone could reveal his guilt, with sealed lips stood mute before the court—locked the story of the prisoner's guilt in his own breast, and, rather than reveal the fate of Morgan, calmly listened to that sentence of the court which immured him in a gloomy dungeon.

Again was John C. Spencer foiled in his attempt to

bring the dark conspirators to justice. But his confidence in his future success was unimpaired; his secret emissaries had revealed to him other guilty persons, and he prepared to proceed with other prosecutions. But to enable him to do so with any hope of success, he demanded of the State the sum of two thousand dollars. This sum, he insisted, was necessary to enable him to procure the attendance of the necessary witnesses, employ special detectives, and to carry into operation the plans which he had matured for discharging successfully the duties of his office.

But, to his chagrin and astonishment, the governor refused to listen to his demand, and he instantly tendered his resignation, retired from a field on which he believed he was soon to be victorious; and the fate of Morgan rests for ever amid the inexplicable mysteries which from the first surrounded it.

At this time, political Anti-Masonry, which had lurked in private dwellings—gathered strength by the fireside—drew nurture from pamphlets and newspapers, began to exhibit itself in strong and threatening proportions. Mr. Spencer and his friends believed that Governor Throop refused the pecuniary assistance demanded, fearing that the discovery of Morgan's fate would enhance the growth of the new party up to a strength sufficient to render it a dangerous rival to the Democratic party. This belief led John C. Spencer to unite his fortune with the Anti-Masonic party.

Among those who were most influential in organizing that party, were Thurlow Weed, Frederick Whittlesey, and Bates Cook. These men and their able compeers, were rarely qualified for pioneers of the new party. Perfectly acquainted with the temperament of the people, they knew how to bear with their caprice, to be indulgent to their eccentricities, to foresee and forestall their wishes, to awaken their sympathies, and to produce

"The loud collisions of applauding hands."

Few persons possess the executive abilities of Mr. Weed in conducting and managing the machinery of party. In the earlier period of his life, he learned those practical lessons of human nature, and gained that general information, which developed the ability of reading men—of penetrating their motives—of scanning the true spirit of the times, eminently qualifying him for superiority and influence as a politician. A strong, vigorous, and graceful writer, his pen was a source of strength, as well a defense to his party and himself.

Like all great party leaders, while he gained the admiration of many, and attached to himself strong and powerful friends, he incurred the censure of the envious, and those who could not, or would not, concur in his policy. Perhaps at no period of his active life, was he free from bitter enemies, in his own party, who, while they condemned him, acknowledged his ability, and his usefulness, when that party was facing the enemy and contending for victory.

When political Anti-Masonry was absorbed by the Whig party, he became one of the great leaders of that party. His judgment, experience and versatile knowledge aided its other leaders in rendering it a formidable and often a triumphant opponent to the Democracy in the State. When the Whig party was merged in the Republican party, no man was more active than he—none more influential in combining the material out of which it was formed, and in blending discordant interests in one absorbing scheme of political ambition—in one community of mutual interests. In adjusting, as he often did with the hand of a master, the nice and delicate machinery which is the motive power of political, and often legislative action, he made mistakes and fell into error; but on the whole, as we have seen, he was of immense advantage to his party; and whatever were his faults, he was well aware that he who enters the political field as a leader must keep his eyes wide open to every

movement of his own partizans as well as the movements of the common enemy—that vanity, spleen, self-love and ambition must all be held in abeyance before the multitude, fondly called by aspiring politicians, "the dear people."

In the infancy of the Anti-Masonic party, Weed, Whittlesey, Cook, and their able partizans, sustained it, until William H. Seward, John C. Spencer, and other prominent men, united with it.

These accessions soon gave it power and vigor. For a time it assumed the proportions of a great political party; but, like all organizations founded on exciting popular themes, it soon withered away, or rather, was absorbed by the Whig party, which was founded on broader principles of State polity.

Mr. Seward was then developing those rare intellectual powers which have since rendered him an illustrious statesman, who, amid his loftiest career, never forgot a friend, however humble—never ceased to labor for his advancement as long as he entertained the belief that he was worthy of his friendship and assistance. Thus he carried with him to his retirement from public life the heartfelt gratitude of many whom, during his long public career, he assisted in various ways.

Mr. Spencer again represented the county of Ontario in the Assembly of 1831. As jurisprudence is the complement of legislation, supplying what is left of the latter in the administration of justice, his connection with the revision of the statutes rendered his presence in this Legislature of the highest importance. He was, therefore, as chairman of the Judiciary Committee, principally engaged in reducing the statutes to a more practical system of legal polity, and he mingled but little in debates.

He was re-elected in the fall of 1832, and at the opening of the session of 1833 he was a prominent candidate for speaker, but his party being in the minority, he was of course defeated.

In the struggle to elect Francis Granger, the Anti-Masonic candidate for governor, Mr. Spencer took a conspicuous part. His party was overwhelmed by the election of Mr. Throop, but he continued inflexibly attached to it, and was one of those who aided in combining it with the Whig party. The strong, quiet grasp which the leaders of the former party had on the rank and file of those who composed it, enabled them to hold its component parts together, to effect the transfer, with singular facility, and to raise, on the mingled elements of a political revolution, a great party, sustained by unrivaled genius and statesmanship, which carried it, for many years, through tangled theories and subtle details, commanding the respect and even the admiration of its enemies. Through all the vicissitudes of the Whig party, Mr. Spencer remained faithful to it. In 1838 it came into power in the State, and the Legislature of 1839 immediately appointed him secretary of state, in place of John A. Dix. In discharging the duties of this office, at a period when the duties were difficult and delicate, the talents of John C. Spencer shone out with much brilliancy. So successfully did he manage the concerns of the State, that his policy tended to increase his own popularity and give strength to his political friends.

In the autumn of 1837, he removed from Canandaigua to Albany, where he resided during the remainder of his life.

Mr. Spencer aided materially in the election of General Harrison. He stood foremost among the great party leaders, who guided the fortunes of the Whig party through that memorable campaign of 1840.

The death of Harrison occurred soon after entering on the duties of his administration, and John Tyler assumed the executive chair of the nation. Having been associated with Mr. Spencer in the Congress of 1819, when he presented to that body his memorable

report against the United States Bank, Mr. Tyler conceived the highest admiration for his abilities as a statesman. This admiration never abated; and on assuming the duties of president, Tyler invited Mr. Spencer to enter his cabinet as secretary of war. The invitation was accepted, and he continued to discharge the duties of that position, until a change in the cabinet rendered it necessary for him to assume the duties of secretary of the treasury.

At length the Whig party, under the guide of Mr. Clay, dissolved all connection with Tyler, but Spencer continued to adhere to the fortunes of the latter. "His extraordinary administrative abilities were invaluable to the incoherent and disorganized cabinet which Mr. Tyler, in his unexpected accession to the presidency, was compelled to rally around him."

He advocated the election of General Taylor, and at a later period, the election of General Scott. After the election of 1852 he never mingled in politics.

In the year 1849 he was appointed one of the codifying commissioners. The judiciary and the legal profession throughout the State warmly sanctioned this appointment, believing that, as one of the revisers of the statutes, he possessed peculiar qualifications for the duty of reducing the Code of Procedure to a practical and useful system; but, much to the regret of the public generally, he declined to accept the appointment, and retired to private life, the quiet of which was uninterrupted excepting when he emerged from it to enter the forum in defense of his venerable friend, Dr. Nott.

Mr. Spencer was characterized by a sound, cautious, discriminating judgment—by a singular patience and perseverance of thought, and by habits of the most fixed and concentrated attention to his own mental operations—endowments which, though not the most popular with the multitude, tended to enrich and to develop his mind.

As a lawyer his authority and influence at the bar and with the bench were unexampled. His success as a legislator and a statesman was great. "An insatiable activity of mind, a knowledge of the widest scope, and aptitude for public affairs, inherited, and indulged in from youth, and disciplined through manhood, rendered him so conscious of his fitness for public station as to close his thoughts to lesser considerations." As has been said of him by one who understood his character in all the relations of life, he took no belief on the credit of great names, or on the mere weight of authority. Subjects presented to him for decision were examined to the best of his ability; and his opinion once formed, it was almost impossible to change it. This element in his character made his prejudices; and they were few, but as strong as his opinions, and as difficult to overcome. Both he used aggressively as well as defensively; so that by men who were of different opinions, he was not regarded with the esteem which his abilities demanded. Thus, when he first went to Canandaigua his political principles differed from a majority of the residents of the village. Party feelings ran high, and twenty years afterwards the effect could be seen in the social relations between him and some of his neighbors.

Though his nature was self-reliant, it was generous. Beneath his cold exterior there existed a fountain of feeling and susceptibility, which those who were not thoroughly acquainted with him could not comprehend. Though so fortunate in his pecuniary affairs that he was never compelled to borrow money but once in his life, and that at the commencement of his professional career, yet when he closed his business affairs at Canandaigua, he burned some six thousand dollars' worth of notes representing money loaned to relieve the necessity of his friends.

In his person he was tall and somewhat slender. His features were prominent and striking, suggesting the idea of reflection rather than emotion. The lines

of his mouth were firm, and there was rather an aggressive poise of his head, while his whole appearance naturally impressed a stranger with his superiority; and therefore, in a large assemblage, even while perfectly silent, he always attracted attention.

As has been said, he was austere and severe, but his austerity and severity were reserved for the bar, for legislative halls—for the public. In his family, with his particular friends, where it was his delight, and one of the great rewards of his unremitting labor, to unbend, he was amiable, simple, natural, cheerful, kind and affectionate.

"Mr. Spencer was in every sense a lawyer. The important trusts which he discharged at different periods never permanently interfered with his professional pursuits. To these he always returned with fresh zeal and a vigor, renewed by efforts which would have exhausted others. Indeed, the impress of his professional character was left upon every office he filled. He made them all subservient to that profession, gathering knowledge from sources which many men would have neglected or despised. The pains of a disease which fastened upon him many years before his death did not cause him to suspend his labors. After retiring from his profession he worked on, chiefly in the peaceful retreat of his study, without complaining, seeming to think it was his duty as it was his pleasure, never to cease his labors while he had the strength to continue them.

"No person who knew Mr. Spencer well could fail to be impressed with his personal character and bearing. He despised everything small and mean, and admired, even in an adversary, whatever was noble and generous."

To his efforts the Albany Hospital owes its existence, and, as has been said by another, "its interests and welfare never ceased to occupy his mind; and I have no doubt that his agency in its foundation was one of the richest consolations on his bed of death."

The State Asylum for Idiots is another institution which owes much to his influence and generosity. He was one of the earliest and most effective members of its board of trustees; and from the day of its foundation to the close of his life he took a deep interest in all that concerned it.

He was proud of his native State—of its history—of the great events of which it has been the theater; and his career forms an important and deeply interesting part of its history.

Mr. Spencer died in the city of New York on the 20th day of May, 1854, in the sixty-eighth year of his age.

JOHN BALDWIN.

Distinguished for his Wit, Humor, and Sarcasm.—Born at Lebanon, Connecticut.—Settled at Geneseo, New York.—Studied Law with Samuel Miles Hopkins.—Character of Hopkins.—Baldwin Admitted to the Bar.—His Marriage.—Commences Practice.—Loses his Property.—His Love of Anecdote.—Popularity with the Profession.—Remark of Vincent Matthews.—Removes to Hornellsville.—A Partner of Judge Hawley.—Hornellsville.—Baldwin's views of its Improvement.—Singular Contrast.—The Allegany Justice.—The Trial.—The Court against Baldwin.—Amusing Scene.—The Contempt of Court.—Is Sentenced to Jail.—The Friendly Inkstand.—The Escape.—The Pursuit.—The Defense.—A Formidable Weapon.—The Second Escape.—Baldwin Indicted for a Libel.—The Arraignment.—Amusing Scene in the Court Room.—Singular manner of his Discharge.—Witty Retort to the District-Attorney.—Engaged in a Trial in the Allegany Common Pleas.—Judge Griffin.—His Sharp Remark to Baldwin.—The Bitter Reply.—Baldwin again in Contempt.—Proposes to Test the Question of Contempt by an Amusing Comparison.—The Sentence.—General Characteristics.

THE name of this eccentric and able lawyer will not soon be forgotten in the counties of Livingston, Allegany, and Steuben. His, wit, his humor, his withering sarcasm, have created a fund of anecdotes almost inexhaustible. If sometimes his wit descended to vulgarity—if occasionally he wielded a tarnished weapon, we can excuse him when we remember that the native mold of his mind was above such perverted use of his intellectual powers. His vulgarisms were like the rubbish and offal which sometimes surround the polished and classic column, showing still the glory and the grandeur of a cultivated architecture.

He was born in Lebanon, in the State of Connecticut. While yet very young, Mr. Baldwin settled in Geneseo, intending to make that place his permanent residence. He had, on attaining his majority, received a competency from his father's estate, and possessed

the advantage of a good education. Soon after settling at Geneseo, he determined to enter the legal profession. At this time, the late Samuel Miles Hopkins, a distinguished lawyer residing at Moscow, Livingston county, invited Mr. Baldwin to enter his office as a student at law, an invitation which he readily accepted.

Mr. Hopkins was not only distinguished at the bar, but he ranked among the eminent orators of western New York. He was a gifted politician, and understood how to handle and manipulate those wires which are touched behind the scenes, and which demand the hand of a master to adjust them. Keen and subtle in his appreciation of the popular sentiment, he understood when and how to move in the political field—when to make a feint, and when to attack, the vulnerable points of the enemy being always known to him.

In the year 1813, he was a resident of Le Roy, New York, and represented the twenty-first Congressional district in the thirteenth Congress with marked ability. He was at this time, and through life, a warm and confidential friend of the late Thomas J. Oakley.

In the year 1821, he represented Genesee county in the Assembly, one of his colleagues being the late Jesse Hawley. He was elected to the State Senate in the year 1822, as one of the representatives from the then western Senatorial district.

Mr. Hopkins subsequently removed to Albany, where, as a lawyer, he took a very high position, distinguished for the force and weight of his arguments at the General Term and in the Court for the Correction of Errors.

Mr. Baldwin continued with Mr. Hopkins until called to the bar, then commenced practice at Moscow. If he did not meet with flattering success there, still his professional career was encouraging, and bid fair to be prosperous and pleasant. Soon after he was admitted to the bar, he married a Miss Sage, the daughter of a respectable citizen of Geneseo. In the midst of his

prosperity, through the failure of a brother, whose paper he had indorsed to a large amount, all the property which he possessed was suddenly swept away, and he was reduced to penury. He never again recovered his pecuniary standing.

His profession being now his only means of support, he entered more ardently and laboriously into the details of its practice, and soon rose to considerable eminence as a lawyer. He remained at Moscow but a year or two after his misfortune, having determined to make Dansville his future home. Here his professional labor was rewarded by a fair, if not lucrative practice. As his business at the bar increased, he became distinguished for his witty sayings, his sharp repartee, and his humorous speeches. At length such was his notoriety, that whenever it was known that Baldwin was to advocate a cause, the court room was crowded with persons drawn together by his fame, and it often occurred that the judge, jury, and audience were convulsed with laughter at some palpable hit which his unlucky antagonist received from him.

While at Dansville, his practice gradually extended into the counties of Allegany, Livingston, and Steuben. His good humor, his never failing fund of anecdotes, joined to his acknowledged professional ability, made him a favorite with his professional brethren and with the people. At this time the income from his profession rendered him independent. But Mr. Baldwin did not possess the faculty of accumulating. At that period the desire for making money had not become quite the all absorbing passion or mania that it now is. Like many of the most distinguished members of his profession, he possessed the ability to make money, but not of turning it to thrifty purposes. Vincent Matthews once said, "An impudent empty headed pettifogger will gain riches, while I grow poor, upon the same principle that a buzzard will fatten, where an eagle will starve. The one will wallow in, and eat carrion, offal, and all manner of unclean things; the

other will turn away in disgust, and seek an atmosphere where such filth never comes."

He remained at Dansville until some time during the year 1835, when he formed a copartnership with the late Honorable William M. Hawley, of Hornellsville, and removed to that village. This connection in business was attended by flattering circumstances, and gave Mr. Baldwin a gratifying assurance of the confidence he had inspired. The firm soon became distinguished for its ability, its fidelity to its clients, and for its success. As I have spoken of one of its members in another part of these sketches, suffice it to say here, that while it continued it had the entire confidence of the public. After his business relations with Judge Hawley were dissolved he continued to practice at Hornellsville, until some time in the year 1842, when he removed to Almond, at which place he resided until his decease, which took place in 1843.

While he was a resident of Hornellsville, that now thriving and beautiful village did not enjoy its present high reputation. Like most villages in a new country, it was infested by sharpers, tricksters, and roughs. The condition of society produced by such persons was not altogether agreeable to his taste, and he conccived a disgust for the place, which he often expressed in the most bitter language. It is related of him, that one morning while at breakfast with a large number of gentlemen at Elmira, where he was attending court, a lawyer at the table said,

"Well, Mr. Baldwin, how are matters at Hornellsville now?"

"Oh, about so so," he replied.

"I learn," continued the gentleman, "that matters are improving there very much indeed."

"Oh yes, they are improving; very rapidly, very, very. Why it has got to be almost as good as Hell, now," said Baldwin, with a gravity which exhibited the entire seriousness of the remark. It is needless

to add that all present were convulsed with laughter at the turn which he gave the conversation.

During his practice in Hornellsville, he was called upon to try an important case before a magistrate in the town of Birdsell, Allegany county. The plaintiff in the suit was the great man of that vicinity, and the justice was one of those trimming, slimy creatures who know how to creep into office by becoming the tool of men whom they regard as their superiors, and of course the influence of the plaintiff over the court was unbounded. And although the right of the case was entirely with Baldwin's client, yet there was but little hope for him in the suit. But, as he was not the man to submit without an effort, he used every means in his power, to convince the justice that he was right—but all to no purpose. He was deaf to everything but the interest of the plaintiff. At length, seeing that the game was up, Baldwin lost his patience, and poured upon the court the bitterest anathemas; perhaps never before or since, has a magistrate been subjected to such a complete excoriation. When he had finished, the lawyer on the other side arose, and informed the court that it was its duty to immediately commit Mr. Baldwin for contempt of court, for said he, "unless you do this, all respect for you as a magistrate will be at an end."

"Talk about respect for that thing," thundered Baldwin, pointing to the magistrate, "why, he acts more like a magpie peeping into a marrow bone, than a magistrate trying a law suit; the deeper he can get his head into a hole the better he feels."

This sealed the doom of the irate lawyer, and the magistrate informed him that he should commit him to the jail at Angelica, for twenty days, for a contempt.

"For a contempt upon whom?" asked the lawyer.

"Why, upon me," said the justice.

"A contempt upon you? the thing is impossible; the most contemptible thing in the universe would be

respectable compared with you. You are the dirty catspaw of the plaintiff here,—a burlesque upon justice. There is nothing but a skunk that could insult you, and even he would vomit when he got through with you," said Baldwin.

The justice commenced in earnest to draw the fearful paper, which was to incarcerate the lawyer in a gloomy dungeon. With the aid of the counsel opposed, who eagerly lent his services, the court made progress towards completing the instrument. The offending lawyer watched them with the most intense interest; as the paper gradually approached completion, and as the justice was about to place his name to it, Baldwin suddenly seized a large inkstand which stood on the table, nearly full of ink, and turned its contents over the dreaded instrument. In a moment, in the twinkling of an eye, it became a sheet of inky blackness, with every letter obliterated. Then calling for his horse, he mounted, and rode away, while the justice and the opposing lawyer commenced another paper. It was now nearly dark, and his only hope of escape was to reach the county line, between Steuben and Allegany counties. But between him and that haven of safety, lay twelve long, weary miles, and unfortunately for Mr. Baldwin, his horse was not a fleet and rapid steed, but on the contrary, was one of the slowest of his species, and slightly lame. In spite of the stern exigency of the case, the lawyer could make but slow progress over the devious route that lay before him. A bright autumnal moon shone down upon him, but all else was gloom and sadness. Visions of dreary dungeons, stern, hard-hearted turnkeys, and prison doors creaking harshly on rusty hinges, floated before his mind's eye. But as it would take a long time for the justice to make a new mittimus, he had strong hopes of escaping.

Onward and still onward he rode without interruption, until he came within a mile of the hoped for

goal, and he congratulated himself upon his escape. Just then his ear caught the clatter of horses' feet upon the ground, and, looking back he saw three horsemen rapidly approaching, whom he knew to be the constable and assistant, armed with the power to arrest him. Vainly he urged forward his weary and lame animal. Every moment his pursuers gained upon him, and he knew that before he could reach the line, he would be taken prisoner. But his fertile mind suggested another mode of escape.

Suddenly wheeling his horse, he faced his approaching enemies. As they rode up, he sternly demanded what they wanted.

"You are my prisoner," replied the constable, "and must go to Angelica with me;" and he attempted to make the arrest.

"Stand off," said Baldwin, "or I'll blow you through."

At the same time he drew from his pocket one of those old-fashioned, large brass inkstand cases used in those days, and presented it to the breast of the officer. The polished surface of the inkstand flashed in the moonbeams like the bright barrel of a pistol, and had a most murderous look. The constable and his assistants started back appalled at the hostile attitude assumed by the lawyer, the former crying out:

"Oh! don't point that this way; it may go off; take care!"

"Leave me, you villains, or by the heavens above us, I'll send a bullet through the very heart of some of you! Leave, I say;" and he gave the inkstand a shake, which caused it to click like the cocking of a pistol.

This was enough. The next moment his pursuers were galloping homeward as fast as their horses could carry them; and Baldwin went quietly home, thinking, as he afterwards said, that his protecting genius had assumed the shape of an inkstand.

Mr. Baldwin was once indicted in the county of Allegany for a very bitter, and, as was charged, libelous letter concerning this same magistrate. The letter was very lengthy, and written in such a manner that portions of it only could be read by any person except the writer of it. In drawing the indictment, the district-attorney attached the letter itself as a part of the instrument. When the offender was brought before the court, he was required to plead to the charges.

"Before entering my plea, I ask for the reading of the indictment," said he.

In those days a prisoner could demand the reading of the whole indictment found against him, and in this case the court directed it to be read. The district-attorney commenced. While reading the usual or formal part of it he did very well, but when he attempted to read the letter itself he soon came to a full stop—studied a while upon it, and commenced again. After stumbling through a few sentences he was obliged to stop again. Turning to Baldwin, he asked if he would not have the politeness to waive the reading of the letter? but the latter declined, and the attorney made one more attempt to read, but soon came to another full stop.

"Will you not read that horrid, ill-spelt, illiterate and abusive letter, Mr. Baldwin?" asked the attorney for the people.

"No, sir; the letter is very legible—very indeed. If the good people of Allegany county have seen fit to elect a district-attorney that don't know enough to read writing, why, I shall not help him along," said the prisoner.

The official then losing all patience, began, in a strain of denunciatory eloquence, to abuse Baldwin, and concluded by saying, "that the annals of crime did not present such an awful, willful and terrible defamer of human character as is John Baldwin, the prisoner at the bar."

As he closed this speech he took a drink of water

from a tumbler that was standing on the table before him. Baldwin, with great gravity, addressed the court as follows:

"May it please the court—in all the records of the past which I have been able to consult, I have never, until this moment, seen or heard of a *wind-mill going by water*."

Peals and roars of laughter, even cheers, went up from all parts of the court room, and for once the vulnerable and brazen-faced district-attorney was silent—stricken through by the prisoner's reply to his speech.

After silence was restored Baldwin again demanded the reading of the indictment. His opponent declared that it could not be read.

"Then, if the court please, I ask that it may be quashed," said the prisoner.

After a few moments' consultation the court directed that it should be quashed; and Baldwin walked from the prisoner's box into the bar, amid the congratulations of his friends.

Mr. Baldwin was, in every sense of the word, an honest man. He never would consent that a case in his hands should be carried by dishonesty or perjury; and he once turned a profitable client out of his office for saying that he could prove anything that Baldwin wished to establish on the trial of a certain cause which the latter was conducting for him.

He was prompt to resent an insult, and was not particularly cautious in the manner of his resentment. He usually corrected all personal wrongs when they were inflicted, regardless of time or place or consequences.

He was once engaged in the trial of a cause in the Allegany Common Pleas, before Judge Griffin, then first judge of that county. The judge, though a man of excellent impulses, and a respectable judicial officer, was occasionally very violent and unreasonable towards counsel.

In the course of this trial, a question arose as to the admissibility of certain evidence offered by Baldwin. The trial had consumed much time, the counsel were tedious and technical—the judge was weary and his patience exhausted. In this state of things, the evidence was offered, and it was peremptorily rejected. Baldwin insisted that the judge had erred in his ruling, and proposed to produce authority on the point, to convince him of his error.

"Mr. Baldwin," said the judge, "I have not sufficient confidence in your legal knowledge, to change my ruling for what you have to say."

"I do not ask your honor to change your ruling on what I have to say; I simply ask your honor to be guided by the law, which is higher authority than either your honor or myself," said Baldwin, "and I now propose to read from Starkie's Evi—"

"Sit down, sir," roared the judge, "you have trifled long enough with me; you hav'n't sense enough to understand the law when you read it."

All in the court house prepared for a scene, and it came.

"I shall obey your honor," said Baldwin, with a look of half smothered anger lowering over his features; "and as to the compliment which your honor has paid me, I do not regard it as worth a straw, for, really, your honor is no more to be compared to a respectable judge, than a bullfrog is to an archangel."

The scene that followed this retort can never be described, nor properly imagined. The face of the judge was pale with anger; for a few moments he sat without making any reply. At length he said:

"Mr. Baldwin, before the court proceeds to punish you for this infamous contempt, I will hear what you have to say."

"Well, sir," said Mr. Baldwin, not in the least intimidated, "I do not know but my remark may possibly be construed into a contempt; but, as I have

some doubts upon the subject, I propose to make it an issue of fact, and submit the matter to a trial. I propose that a constable be sent out with orders to capture a bullfrog and produce him here in court. Your honor shall produce the archangel; and if, upon a fair comparison, I am not fully sustained, I will submit, without a murmur, to any punishment this court may think proper to inflict upon me."

A roar of half suppressed laughter from the audience followed these remarks, which was quickly silenced by the officers.

As the judge was not inclined to accept Mr. Baldwin's proposition, he proceeded to pronounce his sentence upon the offending lawyer, which was ten days' imprisonment in the county jail, and a fine of twenty-five dollars.

The sentence, however, was modified, so far as the imprisonment was concerned, but the fine was paid.

Mr. Baldwin possessed a remarkable memory; and with those whom he considered his friends, he was a pleasing and an interesting companion. His taste for literature was improved by reading the most eminent among the ancient and modern authors. His large and varied experience at the bar, gave him a general acquaintance with the profession throughout western New York, with whom he was a favorite.

He was one of those persons whose faults lay on the exterior of his character, who never attempted to pass for anything better than he really was.

In the society in which he moved, he was an unassuming, but valuable member; and he was once the people's favorite lawyer—in times when men were less polished, less pretentious, but more sincere and direct than now.

SAMUEL BEARDSLEY.

The Duke of Wellington's remark concerning Sir Robert Peel applied to Judge Beardsley.—Superior to Power and Influence.—Above Political Machinery.—His Relation to the History of the State.—His Parentage.—Birth and Education.—Historical Eras.—His Acquaintance with History.—How he Regarded the History of England.—Beardsley as a Teacher.—Commences the Study of Medicine.—Reasons for Abandoning the Study of Medicine, and Commencing the Study of Law.—Judge Hathaway.—Beardsley Commences his Legal Studies with him at Cherry Valley.—Commences the Practice of his Profession as a Partner of Hathaway.—His Character as a Lawyer.—Nathan Williams.—Beardsley Appointed District-Attorney of Oneida County.—The Oneida Bar.—Description of the Office of District-Attorney.—The Intricacy of the Criminal Law.—Anecdote.—Joshua Spencer.—The Sharp Law Point.—The Appeal.—Beardsley Elected a State Senator.—Draws for the Short Term.—Walter Bowne.—John Sudam.—Charles E. Dudley.—Singular Resolution Introduced into the Assembly.—Amusing and Witty Speech of a Member on the Resolution.—It is Passed and Rescinded.—Beardsley is Appointed United States District-Attorney.—Is Elected to Congress.—His Congressional Career.—The Statesmen who surrounded him.—Beardsley is Repeatedly Re-elected to Congress.—While in Congress, is Appointed a Circuit Judge.—Proposes to Accept.—Interview with General Jackson, Mr. Barry, and others.—Is Induced to Decline the Office of Circuit Judge.—His high Position in Congress.—His Strong Speech against the United States Bank.—Comments of the Press.—His Interesting Speech on the Questions of the Reporters for the Press.—Is Appointed Attorney-General.—Greene C. Bronson.—Beardsley's Third Appointment as a Prosecuting Officer.—Remarks of Daniel Cady.—Touching Anecdote Connected with Beardsley as a Prosecuting Officer.—Henry R. Storrs.—Expiration of Beardsley's Official Term.—His Desire for an Active Life.—Resumes the Practice of Law.—Appearance at the Bar.—Death and Character of Judge Cowen.—Mr. Beardsley Appointed to Succeed him.—Judge Beardsley Appointed Chief Justice.—Retires from the Bench on the Adoption of the Constitution of 1846.—His Predecessors.—Returns again to the Practice of the Law.—Description of his Practice.—Remarks of Judge Peckham on the Death of Judge Beardsley.—His Personal Appearance.—Social, Domestic, and Religious Character.

THE Duke of Wellington, prompted by blunt honesty, and clear knowledge of character, once said in the House of Lords, that in every action of his life, Sir Robert Peel, above every man he ever knew, was guided by a love of truth and justice. Without any

exaggeration, that remark may well be applied to the late Chief Justice Beardsley.

Superior to the fascinations of power, or the charms of wealth, he never employed his talents in self aggrandisement. It is remarkable, that the many distinguished positions of honor and trust occupied by him were spontaneously conferred, as the well earned reward of industry, ability, and undeviating honor.

Anxious to discharge with fidelity, the great and responsible duties which Providence assigned to him, he sought the right, regardless of expediency and her temporizing train; he cared little for the detail of political machinery, though a conspicuous and powerful supporter of the political principles which he adopted.

At once the profound jurist, the acute, ingenious, dexterous advocate, the eloquent parliamentarian, the dignified, learned, and impartial judge, he occupied a position in the State which few have attained. Indeed, the history of our State, without the character of Samuel Beardsley, would be wanting in one of its chief ornaments. In the language of an eminent judge, "His parents, though respectable, were poor, hence the son's capacity was not obscured, nor his mental growth retarded by pampered indulgence, nor by the want of strong incentive to action. He enjoyed what most parents through life strive to shield their sons from, *the benefits of early poverty*." Accustomed to overcome the difficulties that surrounded his youth, in his manhood he entered the battle of life to become a conqueror.

Samuel Beardsley was born at Hoosic, in the county of Rensselaer, February 6th, 1790. His father was a farmer, who at an early period removed to the county of Otsego. Here Samuel attended the common schools in the neighborhood, and in the summer worked with his father on the farm. His mind was deeply imbued with the love of knowledge, and he sought every opportunity of acquiring it. His amusement and recreation were in his books. History he

studied as the great mirror that revealed human nature—its passions, its prejudices, its ambition, its virtues, its vices. It was to young Beardsley what Dionysius, of Halicarnassus, defined it, "philosophy teaching by example;" and by its examples and teachings it prepared him to enter the theater of life deeply read in the actions and career of mankind.

In general terms it may be said that the great chain of universal history is formed of three links; of which the first is Greece, the second, Rome, and the third, England, with her colonies; and in some respects it is difficult to assign a preference; but Mr. Beardsley regarded the history of our mother country as second to no other in importance. An intimate knowledge of it often enriched his efforts in legislative halls, at the bar, and on the bench. In a class of cases it exhibited itself with peculiar force in those admirable legal opinions which attest the wisdom of the old Supreme Court, and render its history imperishable.

For a while he was engaged in the occupation of a teacher—that occupation through which so many have advanced to fame and honor. At length he decided to enter the medical profession; and accordingly he commenced his studies with Dr. White, an eminent physician of Cherry Valley. While thus engaged it was his fortune to be present at several important trials which took place at Cooperstown. He watched with the deepest interest the contests of the forum. He kindled at the eloquence of the advocates, lost himself in their discussions of legal questions, and was enlivened by the keen wit, the terse sarcasm, the sharp retort of the legal gladiators before him; and thus the science of medicine and all the beautiful developments of anatomy lost their charms for him. His hopes and ambition were directed to the legal profession.

While attending one of these trials he made the acquaintance of Judge Hathaway, of Rome, New York, to whom he signified his desire to study law. Pleased with the intelligence and apparent ability of

the young man, the judge encouraged him in the undertaking, and invited him to commence his studies in his office. The invitation was accepted. He was then eighteen years of age. Fortunate in the choice of a preceptor eminent for his learning and skill, and one who became deeply interested in him, young Beardsley made rapid proficiency in his studies. He pursued them with great industry until the year 1813, when the war with England turned his attention to the life of a soldier. Enlisting into the army of his country, he was soon advanced to the rank of lieutenant; and on the northern frontier he was subjected to many of the privations and sufferings of war, without participating much in its pomp and circumstance. His term of service expired at the end of twelve months after his enlistment, and he returned, with renewed energy, to the study of his chosen profession, having won the reputation of a brave, competent and well-disciplined officer.

In October, 1815, he was admitted to the bar at Albany and commenced practice as the law partner of Judge Hathaway. The industry and energy of the student continued in the lawyer. In every matter of business, every question of law, finally, in all the details of practice, he was scrupulously correct. While at the bar, every case he conducted was thoroughly sifted, and all the doctrines of the common law and our own statutes, bearing a remote or close analogy to the point in controversy, were made tributary to the talents of the young advocate.

It was the happy and peculiar quality of young Beardsley, to excite the esteem and command the confidence of both court and jury.

"Method and order marked the preparation of his causes; hence his labor was effective. He never wandered on in confused uncertainty deceived by false analogy, but each step was the firm foundation for another. Like the approach of the scientific engineer towards a fortress, each day told the

progress of his work. Though no man whom nature has not well endowed, can, by any amount of exertion, ever become an eminent lawyer, so none, however gifted, can attain high distinction in that profession without great labor. He never addressed the fancy of his audience. Clear argumentation, and a bold indignant denunciation of wrong, were his chief weapons, and in his hands they were almost universally fatal to an undeserving adversary."

With such fortunate gifts, with such unwearied industry, it is not strange that his professional advancement should be rapid and brilliant.

In the month of February, 1821, the official term of Nathan Williams, then district-attorney of Oneida county, expired, and Mr. Beardsley was appointed in his place.

Mr. Williams was a learned and able lawyer, a strong and effective public prosecutor. The selection of young Beardsley as the successor of so distinguished a lawyer, was the surest evidence of the confidence of the public in his ability and talents.

In April, 1823, Mr. Williams was appointed by Governor Yates, a circuit judge of the State. His learning, ability, candor, and courteous demeanor, rendered him a favorite with the profession.

Since its organization, the Oneida bar has been second to no other in the State; upon its roll appear the names of every variety of intellectual talent—many of them the master spirits of their times—those who could kindle with the enthusiasm of poetry and eloquence, who were endowed with the faculty of combining pleasing and beautiful images with the fancy which animates them—those whose power of abstract reasoning established the distinction between empirical and *a priori* deductions; whose knowledge of the law, and capability of methodical argument, divorced from fancy, rendered them powerful where questions of law alone were discussed,—those whose acquaintance with precedent, whose perceptions of

the cardinal points of a case, and whose reflective powers gave them high judicial abilities; and those whose administrative faculties qualified them for the career of the legislator and statesman.

The office of district-attorney at such a bar was calculated to stimulate all the latent powers of Mr. Beardsley's mind, awaken all his energies, and arouse his genius. For, after all, genius is nothing but the intellectual power or skill that is acquired by the concentration of the mind on a single pursuit.

The whole system of our law was then in its practical condition, one of technicalities; while the courts in the administration of criminal law, were scrupulously strict in adhering to forms and rigorous rules. They required of the public prosecutor the most exact conformity to precedent; adhering rigidly to the principle, that it is the right, even of the guilty, to be tried according to known and established rules, that it is an evil of less magnitude for a criminal to escape, then that the barriers erected for the security of innocence be overthrown. Thus the prosecuting officer was obliged to walk, as it were, over mines which the touch of some skillful antagonist might suddenly explode; and he was, therefore, compelled to examine every point, every question which arose, with laborious application.

This state of things produced its benefits in the case of Mr. Beardsley. It led to that emulation, to that struggle for success, and to that progressive improvement, which rendered him equal to the duties of his office, and his patient investigation, his careful preparation, shielded him from motions to quash his indictments, motions in arrest of judgments, and all those attacks from keen and learned lawyers, which the public prosecutor is so often called upon to resist.

On one occasion, in drawing an indictment for arson in the first degree, he omitted an allegation, which the lawyer defending believed to be fatal; but

having some doubt, he consulted Joshua A. Spencer on the point. That sagacious lawyer, after examining it some time, replied:

"Well, I think, though Archbold and Chitty both may sustain you, yet if Beardsley insists that he is correct, I should prefer his opinion to theirs."

The lawyer, however, made his motion to quash the indictment. A long and interesting argument followed; but Beardsley's knowledge of the criminal law gave him a decided advantage. Foster, Hale, Archbold, Chitty, and the American authorities were as familiar to him as the school-boy's every-day lesson, and he sustained his indictment. Exceptions were taken to the ruling of the court, and the case was removed to the General Term, by a *certiorari*, where Beardsley was again sustained.

Many instances of this nature occurred during his official term, which often brought him before the court in banc, giving him an acquaintance with judges and the bar throughout the State. He continued to discharge the duties of district-attorney until October, 1825, when his term of office expired, and Hiram Denio, an eminent member of the Utica bar, succeeded him.

In the autumn of 1822 Mr. Beardsley was elected a senator from the then fifth Senatorial district. As the State Senate was then classed by lot, Mr. Beardsley fell into that class whose term of service was limited to one year.

In the language of Judge Denio, "he had never before belonged to a legislative body, and was the youngest member of the Senate; but, although he was the youngest, he was by far the most efficient. Though it was not then generally acknowledged, he possessed intellectual powers of the highest order, which, as a member of Congress and at the bar of our superior courts, he has demonstrated to the entire satisfaction of the public. As a member of the Senate he was perfectly honest in his political opinions, but

he was a partizan of the most decided stamp. At the same time it is proper to say that he was kind, courteous and friendly to all with whom he associated, of whatever sect or party."

Among the members of this Senate were Walter Bowne, John Sudam, Heman J. Redfield, Jacob Sutherland and Charles E. Dudley. Mr. Bowne was a lawyer from Cooperstown, for many years eminent at the bar and distinguished in the political history of the State. Mr. Sudam was from Kingston, Ulster county, and an advocate of the highest ability. It would not be easy to point out a legal orator whose triumphs at the bar were more brilliant than were those of this eminent personage. In the fluency of his expression, in the pungency of his sarcasm, in his vivid flashes of thought and the quickness of insight with which he seized and developed deeper truths, he resembled the great Irish orator, Grattan. With little taste for politics, he was yet much in the political field. Such were his abilities and usefulness to his party, that he was often compelled by his friends to enter the political arena in opposition to his own inclinations. In the Senate of 1823 he became a friend of Mr. Beardsley, from recognizing in him those traits of character which he admired.

The Senate, at the period when Mr. Beardsley first took his seat in it, was a body of no ordinary intellectual power.

Early in the legislative session of 1823 a singular resolution was offered in the Assembly by Mr. Morse, a member from New York, which was adopted, and was as follows:

"*Resolved* (if the honorable the Senate concur herein), That the practice of addressing the governor by the title of "his excellency," and in the Senate and Assembly, the members and officers thereof by the title of "honorable," be discontinued and abolished, as incompatible with the republican form and principles of the Constitution."

The discussion of this resolution was deeply interesting, and elicited many witty and sarcastic speeches.

"Why, sir," said a member from one of the western counties, "the prefix of Hon. to a man's name has become so common, that it is infinitely worse than the gregarious peerage which Lord Bacon complained of. The flock of honorables in this country, is fearfully on the increase. If the title continues to be thus liberally used, it will bring with it dim recollections of the whipping-post—legendary ideas of those brands and distinctive marks, which of old, were sometimes affixed in the hollow of the hand, or on the side of the face, as index of the singular ability which the individual thus distinguished had for appropriating other people's property to his own use.

"Sir, this prefix has become the distinctive feature of contemptibility struggling for consideration—the inflating principle of nothingness—the intensified idea of merited contempt. Why, sir, to look over the newspapers of the day, one might be led to the belief, that every four corners, every little village, was inhabited solely by great men, who, like Charles V., had resigned power and place from deliberate choice, to enjoy the tranquillity of retirement, were it not for their croakings in conventions, public assemblies, and here in the Legislature of our great State. We shall soon hear of the Hon. John Straight Jacket, just from Auburn Prison; the Hon. Abner Sinbad, from Botany Bay, and the Hon. Peter Funk, from anywhere and everywhere."

The next day, however, the resolution was reconsidered and expunged. So jealous were the legislators of that day of their titles and distinction.

While yet a member of the State Senate, Mr. Beardsley was appointed by President John Quincy Adams, United States district-attorney for the northern district of New York. This appointment gave great satisfaction to the bar, as well as to the judiciary of the State. His experience as the prosecuting officer

of Oneida county, had prepared him to discharge the duties now assigned to him with distinguished ability. He continued to hold the office until November, 1830, when he was elected a representative in Congress from the fourteenth Congressional district, by the Democrats. He entered Congress on the fifth day of December, 1832.

General Jackson was then president, and Andrew Stevenson, of Virginia, was speaker of the House, but after the expiration of a few months he resigned, and John Bell, of Tennessee, was chosen in his place. Mr. Beardsley was honored by the second position on the Judiciary Committee, an evidence of his high standing with his party. In all the exciting questions of that Congress, he was the uncompromising friend of President Jackson, and was regarded by him, as one of his ablest supporters in the House.

His leading principles of political policy were simple, uniform, and firm. He believed that the existence of a moneyed institution like the United States Bank, in a government like ours, was at war with the principles upon which it was founded; "that the Bank had set itself up as a great irresponsible rival power of the government, assuming to regulate the finances of the country, and to control the whole policy of government, in the regulation of the financial concerns of the nation; that it assumed in effect, to dictate to the country, how its government should be administered, and that the question was, whether we shall have the Republic without the Bank, or the Bank without the Republic."

The terrifying apprehensions entertained at that time, of dangers on the one hand, from alleged assumption of power, on the part of the Bank, and on the other hand, the dangers from the encroachments of the executive, in assuming powers and authority which the Constitution did not warrant, afforded a field for argument and discussion, hardly equaled in any period of the nation. The great statesmen and

legislators who participated in that discussion, have had no equal in any age of the world. Neither the Phillipic orations of Demosthenes, nor the consular ones of Cicero, nor in whatever class the speeches of the elder and the younger Pitt may be placed, contain higher exertions of great and original genius, than did the speeches made in Congress during the administration of Andrew Jackson.

And now there are fewer sources of profitable intellectual gratification and instruction, than is afforded by the study of the legislative speeches and documents of that period; they enable us to bring the past under our immediate inspection, and to look calmly back upon the plans, the deliberations, the contests of short-sighted and arrogant mortals, beholding them gravely speculating upon probabilities never to be realized, elated with hopes, or depressed with fears, in most cases groundless and empty; agitated by passions so soon to pass away forever. But as eternal vigilance is the price of liberty, these things are all rightly adjusted by Him who holds the nation as in a balance.

Mr. Beardsley was elected to Congress for three successive terms, thus occupying a seat in the councils of the nation six successive years; during which time he adhered to the administration and supported with great ability the public measures of Andrew Jackson.

The following circumstance illustrates the esteem in which he was held by the president. In January, 1834, while Mr. Beardsley was in Congress, Nathan Williams, a judge of the fifth circuit, became disqualified by reason of his age, and he therefore resigned. Governor Marcy immediately nominated Mr. Beardsley as his successor, and the Senate promptly confirmed the nomination. As soon as this intelligence reached Washington, Mr. Beardsley signified his intention to resign his seat in Congress. General Jackson, who was soon apprized of this, sent for him. On his

arrival at the White House he found several members of the Cabinet and some of the most eminent gentlemen from both branches of Congress in attendance. Supposing that it was a meeting called for some party consultation, Mr. Beardsley took his seat.

"Mr. Beardsley," said the president, "we have understood that you are intending to resign your seat in the House; is this so?"

"It is; I have received an appointment under the government of my State, which, under all the circumstances, I do not feel at liberty to disregard," said Mr. Beardsley.

"Well, Mr. Beardsley, we have requested your presence here for the purpose of urging you to do that very thing. To be frank with you, such a step at this period would be a serious injury to the administration."

"I am not aware in what particular," was the reply.

"You occupy a place in the House, Mr. Beardsley, which no other man can fill, and I am confident that your devotion to the interests of the nation will, in view of this, prompt you to remain at your post in Congress," said Mr. Barry, then postmaster-general.

Other gentlemen present urged him to remain, and he at length consented. That very day the northern mail which left Washington carried a letter to Mr. Marcy from Beardsley, in which he gave his reasons for declining the high position to which he had been appointed.

No circumstance in the Congressional life of Mr. Beardsley more strongly illustrates his high character and his eminent abilities than this. It will, therefore, not be invidious to remark, that amid the gifted and the great by whom he was surrounded, he was distinguished for the depth of his knowledge and the solidity of his reasoning, but more than all by the inflexibility of his principles.

Although, as has been stated, he was firm and in-

flexible in his political opinions, in maintaining them he dealt little in those caustic attacks which rankle in the breast of opponents.

Once or twice in his Congressional career he indulged in language that bordered on extravagance. In April, 1834, his first year in Congress, he delivered a speech of remarkable power on the currency question, in the course of which he said: "Sooner than extend the existence of the Bank of the United States, let it perish, and in its fall carry down every bank in the Union. I say, for one, perish credit, perish commerce, perish the State institutions. Give us a broken, decayed, worthless currency, rather than the ignoble and corrupt tyranny of an irresponsible corporation."

Niles' Register, a strong and powerful advocate of the Bank, after speaking in terms of commendation of the ability displayed in this speech, refers to the above remark as follows: "Such sentiments, coming from a man of Mr. Beardsley's poise, ability and moderation, must have a dangerous influence."

Though not distinguished for rare conversational powers, he could charm, with his tersely-told anecdotes, "with his cordial kindness and his genial humor." In the refined social circles of Washington he was always a favorite; and, as a lady distinguished for her brilliant assemblies, for the wit, eloquence, learning and elegance of her guests, once remarked, "Without Mr. Beardsley at my levees, there seems to be something wanting."

In January, 1834, Mr. Hall, from North Carolina, who had taken umbrage at certain statements made by one of the reporters of the House, concerning the proceedings in a debate in which he had taken part, made an effort to restrain the reporters in their comments upon the proceedings in the House. He was sustained by several other members, and a lively discussion took place.

Mr. Hall and his friends insisted that "frequently, the grossest injustice was done to the members of

Congress, to cabinet ministers, and the administration itself, by the unrestrained liberty, which these representatives of the press enjoyed, in publishing their own views, and in putting their own constructions upon the proceedings in that body, and elsewhere, and therefore, it is proper that certain healthy rules be established regulating the publication of our proceedings."

Mr. Beardsley opposed the adoption of any such rules, or of placing any restraint whatever upon the press, or its representatives in the House. He delivered a speech on the subject which clearly evinced his enlightened liberality, and the justness of his views on the subject. In the course of his remarks he said:

"I am one of those, sir, who favor the entire and pefect liberty of the press on all subjects connected with the government, and in all public matters, and in all places; we have passed the period when that great dispenser of intellectual light and truth shall be circumscribed or hampered, except in its obedience and subjection to healthy laws provided for the protection of character against its wanton and malicious attacks.

"I am free to confess, there should be some amelioration of those laws, at least in some of the States. Sir, jurors are now too frequently called upon to pronounce whether a person innocently or maliciously published that a man's father was hanged. Can any one doubt that a person has a right to publish this fact, provided the man really was hanged? Can it be possible that a minister of state, a member of this, or the upper House, a public officer of any kind, who, in the face of day, commits the grossest injustice, or whose incapacity has been testified by the most notorious blunders, may unblushingly avow his wrongs, or his incapacity, and punish whoever conscientiously and calmly states it to the country? Some persons affect to see great danger to the peace

of community, in an unlimited publication of the discussion of public measures. 'My government and my policy,' said Cromwell, 'are not worth preserving if they cannot stand against paper shot.' That sagacious man never objected to the liberty of the press in any form, and yet history calls him a usurper.

"To hamper the press may serve the purpose of weak, vacillating, erroneous rulers, may favor weak, timid, and time-serving politicians, but the enlightened high-minded statesman will rejoice in its unlimited liberty. Sir, what is there so very captivating in error—what so fascinating in excessive violence—what so attractive in gross and palpable injustice, as to make those tremble who stand firm in the consciousness of being right? Surely truth and sense have at least an equal chance in the contest.

"Then let the press, let every one in this country speak out, comment upon, discuss, describe, and explain all public measures; let the representatives of the press have free access to all public assemblies, and particularly to all parliamentary bodies; let them criticise, scan, condemn, or approve as they please; for in this way light and truth are disseminated; in this way, bold, bad men are rebuked, error exposed, and virtue vindicated; those alone have cause to tremble, who are guilty of wrong, or who are manifestly weak and incapacitated for the place they occupy. In the language of another, a people from whom public measures are concealed, are sure to be easily disquieted; every breath makes them start; all objects appear in false shapes; anxiety and alarm spread rapidly without a cause; and a parliamentary body, the law-making institution of the nation, weakened by delusions which have sprung from unnecessary concealment."

Such was the language, such the fearless utterances of Samuel Beardsley, thirty-six years ago, on the restrictions of the press.

Whoever has examined the opinions delivered by

him as a justice of the Supreme Court, in the various cases of libel which, before the Code, came before that tribunal for adjudication, has observed the learning, research, and liberality with which he discussed the intricate question of the right to give the truth in evidence in cases of libel and slander; especially in those instances where he refers to the conflicting *dicta* in the cases of the King *v.* Draper, and Finerty, which involved the consideration of this question.

Early in January, 1836, a vacancy occurred on the bench of the Supreme Court by the resignation of Mr. Justice Sutherland. Greene C. Bronson, then attorney-general, was appointed in his place, and Samuel Beardsley was immediately appointed attorney-general. That office was, at this time, one of great labor and responsibility. There was an unusual amount of criminal business, while the civil business of the State, at this period, required the exercise of the ablest legal talents. It was fortunate for the State that the governor selected a man so well qualified for the office, as was Mr. Beardsley.

This was the third time he had occupied the position of a prosecuting officer for the people, and the experience he thus gained, was of great advantage to him, rendering him capable of disposing of a large amount of business with facility and dispatch.

A distinguished crown lawyer of England was once asked by one of his fellow students, then just beginning to emerge from obscurity, how he managed to dispose of such an accumulation of business?

"Some I do, some does itself, and the rest is undone," was the reply.

No part of the public business intrusted to Mr. Beardsley was left undone, or left to do itself; his great industry and untiring adherence to all the details of his office, once elicited from Daniel Cady, the following compliment:

"Beardsley," said that eminent man one day, at the conclusion of a long and tedious suit, in which

the attorney-general had labored with incessant energy, "your manner of conducting the public business, reminds me of the remark made by Peter de Blois to Edward II.: 'Your majesty's justicia,' said Blois, 'tries causes so that neither gifts nor partiality are admitted; all things proceed sure and certain, with great rapidity, and yet according to law.'"

"But the remark of Blois referred to the court, and not to the crown lawyer; and in this case it is far more applicable to the court than to the attorney-general," said Beardsley.

"I applied it to both, in this instance," was the reply.

In the discharge of his duties as a public prosecutor, while he was inflexible in his determination to convict those whom he really believed to be guilty, he did not forget that the iron hand of the law was often laid upon the really innocent—those who had no means of rendering their innocence apparent, being involved in the meshes of circumstances which they could not control or explain. When Samuel Beardsley was once convinced that such a case as this really existed, he believed it was as much his duty to shield the person from an unjust conviction, as it was to urge the conviction of a really guilty party.

While district-attorney of Oneida county, a circumstance of this nature occurred, which exhibited the generous impulses of his mind, and his love of the right.

In the winter of 1824 there lived, some six miles from Boonville, in the county of Oneida, a man by the name of Tener, whose family consisted of himself, wife and an only son, a young man about eighteen years of age. They were respectable, though very poor, and had once been in more fortunate circumstances. Therefore, the hand of poverty fell heavier upon them.

One bitter cold and stormy day the father started on foot for Boonville to procure some necessaries for

the family. As the day wore away the cold and wind increased, piling the snow into great drifts, and in places obstructing the road. Night came on gloomy, dark and boisterous, but still he did not return, though he had long been expected by his anxious wife and son, who listened to the howling storm, expecting every moment to hear the footsteps of the returning father; but he did not come. Hour after hour passed away, and still they watched in vain for him. At length anxiety gave way to the most dreadful apprehensions, and in imagination they beheld him as he wandered on

> "From hill to dale still more and more astray,
> Impatient flouncing through the drifted heaps,
> Stung with the thoughts of home."

Often, as some terrible sweep of the wind went shrieking by their humble dwelling, they fancied cries for help. No pen can describe the terrible anxiety of that hour. The son could endure it no longer, and he was determined to rescue his father, who he now believed was perishing in the snow.

Near his house there was a barn belonging to a thrifty farmer—a harsh, selfish and grasping man—who, for some reason, was a bitter enemy of Tener. The young man knew that in the stable to the barn there were several horses, and that it was never locked. Thinking of nothing but the safety of his father, he hastened to the stable, led out one of the horses, and with nothing but a halter to guide him, mounted him and took the road to Boonville, anxiously watching for his father, whom he expected to find struggling in the snow; but, as he did not discover him, he rode on until he reached the village. Here he learned that his father was at the house of an acquaintance near the village, having started home and been driven back by the storm.

Soon after the young man left the stable the farmer discovered that his horse was missing; and mounting

another, he followed young Tener to the village, reaching it just as he had started to return. Taking the animal from the young man, he immediately procured a warrant, charging him with burglary and grand larceny.

In the morning he was conducted before a magistrate, examined, and held to answer for those dreadful crimes. A kind friend consented to bail him, and the young man, in company with his father, returned home. In due time he was indicted by the grand jury, and a gloomy fate seemed to await him.

The late Henry R. Storrs, then one of the ablest advocates at the bar—a man of strong sympathy and generous emotions—believing the story of the young man, consented to undertake his defense, though he had little hope of success. He studied the case in all its aspects, but saw no ray of hope. The proof was positive that he entered the barn in the night time, took the horse, rode it away, was found with it in his possession, six miles from home. Neither the entreaties of the father nor the agonized pleadings of the mother touched the heart of the relentless farmer.

"Such crimes must be punished for the good of the people," was all the answer he would make.

In this emergency Mr. Storrs advised his client to put Mr. Beardsley in possession of all the circumstances of the case. Accordingly, Storrs himself called on Beardsley, obtained his consent to meet the parents and their son, and hear their story. He listened to the mother as she related the circumstances in all the eloquence of maternal truthfulness. The scene of the terrible night was depicted with faithful earnestness, but with no exaggeration. Her words alone convinced him that there was no intended larceny, no design to steal the horse; that the whole act was the result of the poor boy's intense anxiety for the safety of his father. This belief, joined to the irreproachable character of the family, rendered him conscious that duty did not require him to enforce the law against him.

Soon after this the Oneida Oyer and Terminer commenced its session, Honorable Samuel R. Betts presiding. As soon as the court was organized for business, Mr. Beardsley arose, and in a few but well-timed words stated to the judge the case of young Tener, concluding by saying that he felt confident that there was no crime intended on the part of the accused, and asked the court for leave to enter a *nolle prosequi* to the indictment. After consulting with the Honorable Norris Miller, then first judge of Oneida county, Judge Betts said:

"Mr. Beardsley, the court regards this as a singular circumstance. Your own character, however, is a sufficient guaranty for the court to grant your request."

Whereupon, young Tener was discharged.

Mr. Beardsley's official term expired on the last day of December, 1838, and he was succeeded by Willis Hall. Thus, after an active public career of nearly thirty-six years, he retired to private life. But he had so long been an ardent actor in the great drama of politics, that he could not remain inactive. Besides, he understood the "effect of inactivity upon the physical structure and energies; that rust is more fatal to metal than wear.

"The temper and intellect of man, secluded from the scenes of appropriate stimulus and exercise, become relaxed and weakened. What would have become of Achilles, if his days had all melted away in the tender, delicate, emasculating inactivity and indulgence of the court of Lycomedes? The language of the ancient orator concerning his art may be applied to life, that not only its greatness but its enjoyment consists in *action*, ACTION. The feelings, for instance, may become so morbidly sensitive as to give an appearance of weakness to the whole character; and this is likely to be specially the case of one with feelings of superior liveliness and deli-

cacy, if he moves only in the haunts of silent, profound abstraction and contemplation—in those refined regions which may be termed a sort of paradise, where every conceivable source of enjoyment is cultivated for the fortunate and fastidious occupants, to the very uttermost, and all those things which fret, worry and harass the temper, the head and the heart of the dwellers in the rude regions of ordinary life, most anxiously weeded out, instead of entering into the throng of life, and taking part in its constant cares and conflicts—scenes which require all his energies to be always in exercise to keep his place and escape being trodden under foot. The man who feels a tendency to shrink from collision with his fellows, to run away, with distaste or apprehension, from the great practical business of life, does not enjoy complete moral or intellectual health—will quickly contract a silly conceit and fastidiousness, or sink into imbecility and misanthropy."

Nothing of this kind was allowed to affect the mind, or impair the intellect of Mr. Beardsley. As soon as he was relieved from the cares of office, he resumed the practice of a profession which he loved too well to abandon; and in a very short time he found himself in the midst of a large and prosperous business. It was, however, confined to the General Term, and to the Court for the Correction of Errors, although he occasionally appeared at the Circuit.

In his appearance at the bar, he resembled John C. Spencer, though his imagination was not so entirely cold and colorless as that of Mr. Spencer, and therefore he exhibited considerable enthusiasm in conducting an argument, and in trying a cause before a jury.

Early in February, 1844, the judiciary, the bar, and the State, sustained an almost irreparable loss by the death of the excellent and learned Esek Cowen, then one of the justices of the Supreme Court of the State. His vast legal knowledge, his intimate acquaintance with precedent, his wonderfully retentive memory, his

unceasing industry, his love of research, gave him the reputation of being one of the most erudite judges in the nation. His legal opinions are the trophies—the imperishable monuments of his great judicial powers; they have been criticised for their length, their prolixity, and their discursiveness, but those faults, if indeed they can be considered faults, are the result of his great profundity. It caused him to trace every principle of law to its fountain head—to describe every variation and restriction in its course, modifying or neutralizing its force and meaning. All precedent, whether English, French or American, was as familiar to him as the simplest elemental principles. So systematically were they arranged, in the vast storehouse of his memory, that he could lay his hand as easily upon the most remote or ancient adjudicated principle, as he could upon that which had just been pronounced, selecting the casual dictum which accompanied them from the real question decided, with the most remarkable precision.

His application of the doctrine of recoupment to a class of actions sounding in damages, was but one of the many offsprings of his intuitive legal mind. In many respects, he was to the American bar what Mansfield was to the English. Like Mansfield, in preparing his legal opinions, he was accustomed to a liberal expenditure of mental capital, an excess of intellectual labor, which rendered them firm and solid in texture—fabrics elaborately finished, exhibiting the triumphs of a great intellect; while they simplified the nice technicalities and distinctions of the ancient common law, adapting it to the necessities of an enlightened age and a commercial people.

The lawyer, the student, the scholar, those who love the learning of the bar, those who admire judicious and philosophic arguments, and possess the industry to seek for them, will find in the opinions of Judge Cowen, legal Golcondas glowing with richest gems of erudition.

On the death of Judge Cowen, Governor Wright appointed Mr. Beardsley in his place. Perhaps no man in the State was better qualified for the position than he. Independent of that ability and cast of character which qualified him for the various high positions which he had occupied, he was remarkably adapted for a judicial position. His habits of patient and impartial investigation, his accurate judgment and quick perception, seemed to have formed him by nature for a judge, and he rose with great rapidity in public opinion, and in the estimation of the bar, and his brethren of the bench. In his inquiry after truth he was patient, diligent and laborious; often revising his own opinions, communicating to his brethren his conclusions, and reasoning with freedom; listening candidly to theirs, emancipating himself from all pride of opinion, ready to yield his own to more apparent truths.

The decisions pronounced by him from the bench of the Supreme Court, are the best history of his judicial life. They bear the impress of his mind, and his positions are modestly yet firmly taken, and fortified by that judicial erudition which raised him to the front rank of his profession.

He occupied his seat upon the bench until the old Supreme Court passed away before the innovations made by the convention of 1846.

On the retirement of Chief Justice Bronson from the bench in June, 1847, Judge Beardsley succeeded him, and as John Jay was the first chief justice of the old Supreme Court, so Samuel Beardsley was the last. The office existed from the 8th day of May, 1777, until January 1st, 1848, and a long line of distinguished names embellished its record—names which lose nothing when compared with those great judges who have appeared on the page of England's judicial history. Had they faults? Doubtless, for they were human. But the biographer of men, who through a succession of years occupied a judicial position, and

who with each passing year constantly increased in the esteem and confidence of the public, can find few if any faults that are worth to be recorded. They may have had the passions, the prejudices, the cupidity and jealousy of others, but they must have held them in control while in the discharge of their high functions.

Judge Beardsley, after retiring from the bench as chief justice of the Supreme Court, though not engaged in as many cases as some others, was counsel in nearly all of the most important cases in the Court of Appeals—causes involving from thousands to millions of dollars. In speaking of his ability, the late Nicholas Hill once said: "I had been retained as counsel in a very important cause, with the liberty of choosing my colleague from the ablest in the country, and without hesitation I selected Judge Beardsley."

In the elegant language of an eminent judicial officer of the State—Judge R. W. Peckham, "Judge Beardsley knew men and the springs of human action; he was able to inspire them with a portion of the same spirit that fired his own bosom. He had really more of the General Jackson in him than any of the public men that survived the old hero."

Eminent as he was in ability, he was not less distinguished for the high toned, manly integrity that characterized every act of his life. To say that he was honest, conveys no adequate conception. Fidelity and truth were in every element of his nature. Many lawyers deem it entirely admissible, in preparing amendments to bills of exceptions, to speculate upon the forgetfulness, the possible partiality or fear of appearing ridiculous, of the judge who tried the cause. Judge Beardsley was not of that number. The late Joshua A. Spencer, who had practiced law in the same town with him for a quarter of a century, in alluding to the chivalrous integrity of Judge Beardsley, observed to me that he never felt called upon to examine with much care bills of exceptions or amend-

ments from him, as he knew they were always prepared with a scrupulous regard for the truth of the case, as it occurred on the trial. Nor was he in the habit, on the argument of cases, of expressing his own opinion to the court as to the merits of his cause. He chose to prove the case in the legitimate model of authority and argument. . . . . Though a candidate at various times for popular favor, in fact a public man, he never sought popularity by changing in the slightest degree from that urbane dignity and manly mien, the opposite of that of a demagogue, that always marked his carriage. He never could sink down into the sycophant—there was nothing of servility, nothing of hypocrisy, nothing of sham in the man. A delicate modesty always shone with peculiar grace upon the hardier features of his character."

Judge Beardsley died at Utica on the 7th day of May, 1860. He continued at the bar until a short time before his death. Two weeks before that event, he appeared in the Court of Appeals, and in a case involving many intricate questions, made an argument to which the bench and the bar listened with pleasure and profit.

In person he was tall and commanding; there was that in his presence which evinced superiority; and yet there was no repelling or chilling reserve in his manner. His features indicated thought, intellect and firmness, while his high forehead developed high moral and reflective faculties. On the bench, he was dignified and courteous; his manner of listening to an argument elicited the confidence of the speaker, and drew from him all that he desired the court to understand.

"In private life, he was social and hospitable, in his family kind and tender; no man enjoyed the society of his friends so perfectly as he did. 'Having completed the business of the day, it was peculiarly grateful to him to meet them in the confidence of

private friendship, and then he was a most pleasing companion.' But he was 'lofty and sour to those who loved him not,' and to his enemies, those few, who in life, crossed his path in hatred, he was implacable—sometimes aggressive in his resentment—he knew how to be a turbulent and persistent hater."

He was a firm believer in the Christian religion, unostentatiously devoted to the observance of its worship. He had little respect for loud and stormy professions of religion, believing that deep and ardent piety, while it is intended to act powerfully on our whole nature—on the heart as well as on the understanding and the conscience, is generally noiseless and seeks no display.

If there is one among all the great judges who have adorned the bench and bar of New York, to whose memory the language of eulogy and even panegyric is due, it is that of SAMUEL BEARDSLEY.

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